HAMPDEN TOWN COUNCIL MEETING

HAMPDEN MUNICIPAL BUILDING

AGENDA

MONDAY DECEMBER 06, 2021 6:00 P.M.

A. PLEDGE OF ALLEGIANCE

B. APPROVAL OF THE AGENDA

C. CONSENT AGENDA

1. SIGNATURES

2. COUNCIL MINUTES

a. 10/18/2021 Council Meeting
b. 10/25/2021 Council Workshop

3. COMMUNICATIONS

4. COMMITTEE MINUTES

D. PUBLIC COMMENTS

E. POLICY AGENDA

1. NEWS, PRESENTATIONS & AWARDS

2. PUBLIC HEARINGS

3. NOMINATIONS – APPOINTMENTS – ELECTIONS

a. Appointment of Lionel E. El-hajj to the Planning Board for a term ending 12/31/2023 to fill the unexpired term of Jake Armstrong who has resigned.

F. COMMITTEE REPORTS

G. UNFINISHED BUSINESS

H. NEW BUSINESS

a. Council authorization for the expenditure of $620.21 from the Library Reserve Account 3-763-00 to pay Avalon Village Owners Association statement dated 11/19/21, *requested by Debbie Lozito, Library Director.*

Note: Council will take a five-minute recess at 8:00 p.m.

b. Request for Council approval of a canoe/kayak storage unit, *requested by Amy Ryder, Economic Development Director.*

c. Council review of BlueWave Solar Ground Lease, *requested by Amy Ryder, Economic Development Director.*

I. MANAGER'S REPORT

J. COUNCILOR'S COMMENTS

K. ADJOURNMENT

Note: Council will take a five-minute recess at 8:00 p.m.

FOR THOSE THAT WISH TO PARTICIPATE IN THE REMOTE HAMPDEN TOWN COUNCIL MEETING ON DECEMBER 6, 2021 AT 6:00 PM YOU MAY PHONE IN USING THE FOLLOWING NUMBER (FOLLOWED BY THE PIN #)

1-470-236-6578 PIN 320 722 937#

OR-

FROM A LAPTOP OR A DESKTOP, YOU MAY GO TO THIS URL: https://meet.google.com/itx-apso-aas?hs=122&authuser=0 AND JOIN US THAT WAY

INSTRUCTIONS ARE POSTED WITH THE AGENDA AND SEPARATELY ON THE TOWN CALENDAR AT WWW.HAMPDENMAINE.GOV

Using Google Meet to Participate in Hampden Town Council Remote Meetings

How to join:

1. Town Council members will receive an email or a Google Calendar invite with a link to join the meeting.
2. People interested in joining will need to go to the link posted on the town events calendar at www.hampdenmaine.gov.
3. Anyone can also join for audio-only participation by calling the number provided on the town events calendar and then entering the PIN provided followed by the # symbol.

Protocols for Remote Meetings:

1. Log in or call in at least 5 minutes before scheduled start of meeting.
2. For the audio portion, use either your phone or your computer microphone, not both.
3. Mute your phone or computer mic unless speaking. Remember to un-mute if you want to speak. To mute or unmute in Google Meet, click on the little microphone icon at the bottom of the screen; note you may need to move your mouse pointer around the bottom of your screen to get the bottom bar to appear.
4. Speak up if using a computer microphone or if using the speaker function on your telephone.
5. Do not rustle papers in front of your mic unless it's muted. Please minimize background noise.
6. If you're referring to a document, identify it including page or sheet number.
7. If using the video function, have a light source in front of you if possible. Try to avoid backlighting.
8. If you want to look good, have your camera mounted at eye level or above. Look at yourself on screen to check the lighting, camera position, what's in the background, etc. In Google Meet, you can do this "video check" when you open the program before you join the meeting.
9. If you are participating by audio only, identify yourself when speaking.
10. ALL votes will be by roll call.
11. After the meeting is adjourned, click on the red phone icon on the bottom bar to leave the meeting, or (obviously) just hang up the phone if that is how you are participating.

For detailed instructions on using Google Meet, please refer to their website:

support.google.com/a/users/answer/9282720?hl=en

C-2-a

HAMPDEN TOWN COUNCIL MEETING

HAMPDEN MUNICIPAL BUILDING

MINUTES

MONDAY OCTOBER 18, 2021 6:00 P.M.

In Attendance:

Councilor Eric Jarvi
Councilor Christine Cubberley - Remotely
Councilor Ivan McPike
Councilor Allen Esposito
Councilor Peter Erickson

Paula Scott, Town Manager
Gayle C. Decker, Town Clerk
Amy Ryder, Economic Development Director
Melinda Kinney, Spectrum
Clifton Iller, Town Planner
Other Members of the Public

Deputy Mayor Jarvi called the meeting to order at 6:00 p.m.

A. PLEDGE OF ALLEGIANCE

Deputy Mayor Jarvi led the Pledge of Allegiance.

B. APPROVAL OF THE AGENDA

Motion: *Councilor Cubberley made a motion to approve the agenda, seconded Councilor Esposito. Vote by roll call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 - 205

C. CONSENT AGENDA

Motion: *Councilor Esposito moved to approve the consent agenda, seconded by Councilor McPike. Vote by roll call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 - 206

1. SIGNATURES

2. COUNCIL MINUTES

3. COMMUNICATIONS

   a. Renewal Victualer's License – Peter Erickson, dba Erickson's Hardware.

   b. Renewal Victualer's License – Lorraine Wilbur & Lynda Nowell, dba Coffee Break Café.

   c. Press Release Award of Safety Enhancement Grant.

Note: Council will take a five-minute recess at 8:00 p.m.

d. BlueWave Notice of Public Information Meeting and Intent to file Application Hampden Solar Project.

4. COMMITTEE MINUTES

D. PUBLIC COMMENTS

E. POLICY AGENDA

1. NEWS, PRESENTATIONS & AWARDS

a. Spectrum's presentation on Broadband intentions in Hampden, *presented by Melinda Kinney.*

Melinda Kinney gave a presentation of Spectrum's Broadband intentions in Hampden.

2. PUBLIC HEARINGS

a. Proposed Shoreland Zoning Map Amendment.

Motion: *Councilor Esposito moved to open the Public Hearing for the Proposed Shoreland Zoning Map Amendment, seconded by Councilor Erickson. Vote by roll call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 207

Clifton Iller spoke with an overview of the Proposed Shoreland Zoning Map Amendment.

Motion: *After Council discussion and with no public comment Councilor Esposito made a motion to close the public hearing, seconded by Councilor Cubberley. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 - 208

Motion: *Councilor McPike made a motion to approve the Shoreland Zoning Map Amendment, seconded by Councilor Esposito. Vote by roll call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 -209

Note: Council will take a five-minute recess at 8:00 p.m.

3. NOMINATIONS – APPOINTMENTS – ELECTIONS

a. Appointment of Benjamin A. Dunham for a term ending 12/31/2025 to the Planning Board to fill the unexpired term of Ryan Bickford, due to Ryan's resignation.

Motion: *Councilor Cubberley so moved the appointment of Benjamin A. Dunham for an unexpired term to the Hampden Planning Board, seconded by Councilor Esposito.*

Motion *was then made by Councilor Esposito to amend that the term will end on 12/31/2025 and was seconded by Councilor McPike. Roll call vote on amendment 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 - 210

Roll call vote on original motion with amendment 5-0 with all Councilor's voting in the affirmative.

Resolution: 2021 - 211

b. Reappointment of Julie A. Johnson for a three-year term to the Board of Appeals.

Motion: *Councilor Cubberley so moved the appointment of Julie A. Johnson to a three-year term to the Hampden Board of Appeals, seconded by Councilor Esposito. Roll call vote 5-0 with all Councilor's voting in in the affirmative.*

Resolution: 2021 - 212

F. COMMITTEE REPORTS

Councilor Jarvi reported on the October 12th Council Workshop.

G. UNFINISHED BUSINESS

H. NEW BUSINESS

a. Request for Council authorization to expend $18,000.00 from Personnel Reserves (G3-733-00) to reimburse the Town of Orono for the training costs associated with Officer Adam Oko's graduation for the Basic Law Enforcement Training Program at the Maine Criminal Justice Academy in December of 2018, *requested by Christian Bailey, Director of Public Safety.*

Motion: *Councilor Esposito moved the authorization to expend $18,000.00 from Personnel Reserves to reimburse the Town of Orono for the training costs associated with Officer Adam Oko's graduation from the Basic Law Enforcement*

Note: Council will take a five-minute recess at 8:00 p.m.

Training Program at the Maine Criminal Justice Academy, seconded by Councilor Cubberley. Roll call vote 5-0 with all Councilor's voting in in the affirmative.

Resolution: 2021 - 213

b. Conveyance of town owned property to abutter Robert and Moira Meyers, identified as a buffer within the Nason Knoll Subdivision and further identified as map 5 lot 48-10, for the amount of $2,500.00, to pay no fees for the legal work and deed recording, and with the covenant prohibiting the building of any structure on said lot.

Motion: *Councilor McPike moved conveyance of Town owned property to abutter Robert and Moira Meyers described as Map 5 Lot 48-10 for the amount of $2500.00, seconded by Councilor Esposito.*

Motion: *Councilor Esposito so moved to amend to include that no subsequent fees will be charged and that the property is not to be built on, seconded by Councilor Cubberley. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 214

Roll call vote on original motion with amendment 5-0 with all Councilor's voting in the affirmative.

Resolution: 2021 - 215

c. Council action on a service charge abatement for the Housing Foundation in the amount of $22,419.35.

Motion: *Councilor McPike so moved Council approval of service charge abatement for the Housing Foundation in the amount of $22,419.35, seconded by Councilor Esposito. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 216

d. Council action on a service charge abatement for OHI-George Street in the amount of $1,934.91.

Motion: *Councilor McPike so moved Council approval of a service charge abatement for OHI-George Street in the amount of $1,934.91, seconded by Councilor Esposito. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 217

Note: Council will take a five-minute recess at 8:00 p.m.

e. Council action on a service charge abatement for the OHI – Patterson Road in the amount of $1,948.23.

Motion: *Councilor Esposito so moved Council approval of a service charge abatement for OHI-Patterson Road in the amount of $1,948.23, seconded by Councilor Erickson. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 218

f. Council review and approval of the proposed FY22 Service Charges, *requested by David Johnson, Deputy Treasurer.*

Motion: *Councilor Esposito so moved Council authorize approval of the proposed FY22 Service Charges, seconded by Councilor Cubberley. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 219

g. Request for Council authorization to expend the amount of $2,000.00 from Library Reserve Account 3-763-00 for the remaining repair of the library roof.

Motion: *Councilor Cubberley so moved Council authorization to expend the amount of $2000.00 from Library Reserve Account 3-763-00 for the remaining repair of the Library roof, seconded by Councilor Esposito. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 220

h. Request for Council authorization for the expenditure of $9,464.00 from Recreation Area Reserve to pay Hampden Electric.

Motion: *Councilor Cubberley so moved Council authorization to expend $9,464.00 from the Recreation Area Reserve to pay Hampden Electric, seconded by Councilor Esposito. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 221

i. To see if the Town of Hampden will vote to adopt the provisions of 5 MRSA section 18252-C (PL 202, Chapter 286) as allowed by MainePERS Rule Chapter 803.

Motion: *Councilor McPike so moved to adopt the provisions of 5 MRSA section 18252-C (PL 202, Chapter 286) as allowed by MainePERS Rule Chapter 803, seconded by Councilor Cubberley. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*
Resolution: 2021 – 222

Note: Council will take a five-minute recess at 8:00 p.m.

j. To authorize the Town Manager to sign the amended Agreement between the Town of Hampden and the MainePERS.

Motion: *Councilor Cubberley so moved Council authorize the Town Manager to sign the amended Agreement between the Town of Hampden and the MainePERS, seconded. Vote by Roll Call 5-0 with all Councilor's voting in the affirmative.*

Resolution: 2021 – 223

I. MANAGER'S REPORT

Town Manager's Report is attached to Agenda as Exhibit A

J. COUNCILOR'S COMMENTS

Councilor Cubberley - As you know, I am in California and on my way to California I flew over Lake Michigan, and it reminded me how beautiful and incredible this Country of ours is. So, I'm telling everybody before you want to travel abroad, consider traveling here and discovering how wonderful this Country is. Goodnight Hampden.

Councilor Erickson – Thank you for joining us Lani and thank you Amos and Julie for your service to the town too. Have a good night.

Councilor Esposito – I want to take a second to talk about wet leaves Hampden. Okay, I know that we have some older folks here. I really want you all to pay attention, make sure that nobody's gonna slip, trip and fall and get hurt on your property or elsewhere. You know, just be careful walking on wet leaves don't need anybody getting hurt. And if you're driving on him, don't drive crazy because you're just as apt to slip and slide. Thank you.

Councilor McPike – No comment.
Councilor Jarvi - No comment.

K. ADJOURNMENT

Meeting adjourned at 7:15 p.m.

Respectfully submitted
Gayle C. Decker, Town Clerk

Note: Council will take a five-minute recess at 8:00 p.m.

Exhibit A

Memorandum

TO: Town Council
FROM: Paula Scott, Town Manager
DATE: October 18, 2021
RE: Manager's Report

- As you know from our Council workshops and meetings with regard to recent storm events, all areas that suffered culvert and road wash outs have been repaired, and other crossings that have been compromised are being assessed by Public Works for anything that should be fixed next year. We have one more crossing on the Canaan Rd. that, although didn't cause a wash out during the last storm, is extremely compromised as the bottom of the culvert is completely gone, causing some degradation of the road. That will be repaired this fall so that it can settle over the winter and be compacted properly ahead of next year's paving of that road.

- The FY21 audit commenced today and is expected to be in full swing for the next three days in house. Leading up to today, the auditor requested lots of information to be sent as a precursor, and we anticipate some items will have to be sent after this week. The Finance Department has worked extremely hard over this past year to tighten up some of the areas in which have been troublesome in the past, such as ambulance billing, checkbook reconciliation, and reconciling the sewer fund to the general ledger and this is the first year since I have been in Hampden, that we have gone into the audit with absolutely no items that were incomplete. The Finance Department are actually excited to complete the audit, and I tip my hat to them for all of their hard work.

- As a reminder, the November 2nd election will be held at the Skehan Recreation Center. Polls open at 8:00 a.m. and will close at 8:00 p.m. The office staff has been in full swing receiving requests for and issuing absentee ballots. For anyone wishing to vote an absentee ballot, you may request a ballot in writing, over the telephone, through the on-line ballot request service on Maine.gov, or by coming to the Town Office.

- We recently completed interviews for Recreation Director, and out of 8 applicants interviewed 5. I have made a conditional offer of employment to one of the candidates and we are now awaiting the results of the background check. The successful candidate resides in California and is the Outdoor Recreation Director at Evergreen and Rusch Creek Lodge at Yosemite slated to join us on January 2nd.

C-2-b

HAMPDEN SPECIAL TOWN COUNCIL WORKSHOP

HAMPDEN MUNICIPAL BUILDING

MINUTES

MONDAY OCTOBER 25, 2021 6:00 P.M.

In Attendance:

Mayor Wright-Remotely
Councilor Eric Jarvi
Councilor Mark Cormier
Councilor Ivan McPike
Councilor Allen Esposito
Councilor Peter Erickson
Councilor Christine Cubberley

Paula Scott, Town Manager
Victor Smith, Public Works Director
Jason Lundstrom, Deputy Fire Chief

A. CALL TO ORDER

Deputy Mayor Jarvi called the meeting to order at 6:00 pm.

B. UNFINISHED BUSINESS

C. NEW BUSINESS

a. Council discussion on Manning Mill Bridge

Town Manager Scott gave an overview of the Manning Mill Bridge. After discussion consensus of Council is for the higher load limit bridge to be something to look at and the route to fund would be using the excess revenue sharing dollars, described by the Town Manager and conserving the unassigned general fund balance for the future usage. Referred to Regular Town Council Meeting.

b. Staff recommendations on use of ARPA funds including emergency response vehicle

Town Manager Scott stated that she met with Chief Bailey, Victor Smith, DPW, Amy Ryder, Economic Development Director, Deputy Treasurer David Johnson and Tammy Ewing, HR Director to discuss uses of ARPA funds based upon what is allowed within the act and what specific needs the Town of Hampden has. The Town of Hampden is slated to receive $728,000. She spoke on the prioritized list of items being: Engineering for sewer build out on Coldbrook Road;Contribution to an emergency response vehicle; Hazard pay for emergency personnel; Inspecting/mitigating I/I to increase sewer capacity; Sewer line sagging repair at Stoney Brook; Restocking EMS supplies used during covid; Reimbursement of unemployment costs and engineering for Cottage Street stormwater project. After discussion Council consensus is to forward the Town Manager's suggested priority list for discussion to the next Town Council Meeting.

c. Council discussion on franchise fees

This item was added to the Agenda at the meeting.

Note: Council will take a five-minute recess at 8:00 p.m.

Town Manager Scott stated that she discovered that the Town of Hampden's Franchise Agreement with the cable company expired in 2013 and the agreement itself is outdated, She reached out to the Cable Television Association of Maine and they provided information for a sample policy which she has updated and made specific to Hampden. One of the changes was that even though the original Franchise Agreement called for a 5 % return to the Town, in 2003 the Town asked the Cable Company to modify the agreement to reduce it down to a 1% return to the Town. The new agreement is with the Town Attorney for review. Council suggestion is to advance the 5 % as the industry standard for the new Franchise Agreement for consideration by full Council.

d. Executive session pursuant to 1 M.R.S.A. section 405(6)(c) to include the Town Manager and Economic Development Director

Executive session pursuant to 1 M.R.S.A. section 405(6)(c) to include the Town Manager, Economic Development Director and Public Works Director entered at 6:47. Roll Call Vote 7-0

Executive session ended with no votes taken.

D. ADJOURNMENT

Meeting *adjourned after Executive Session.*

Respectfully Submitted,

Gayle C. Decker, Town Clerk

Note: Council will take a five-minute recess at 8:00 p.m.

E-3-a

Check One: ✓ Initial Application
___ Reappointment Application

TOWN OF HAMPDEN

APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: El-hajj (LAST) Lionel (FIRST) E (MI)

ADDRESS: 113 (STREET) Western Ave Hampden (TOWN) Me 04444 (ZIP)

MAILING ADDRESS (if different): _____

TELEPHONE: 576-6803 (HOME) — (WORK)

EMAIL: lonnieelhajj76@gmail.com

OCCUPATION: retired

BOARD OR COMMITTEE PREFERENCE:

FIRST CHOICE: Planning Board

SECOND CHOICE (OPTIONAL): _____

How would your experience, education and/or occupation be a benefit to this board or committee?

See resume.

Are there any issues you feel this board or committee should address, or should continue to address? ADA accessibility

3 YEAR

BOARD OF ASSESSMENT REVIEW
PERSONNEL APPEALS BOARD
LURA HOIT MEMORIAL POOL
HARBOR COMMITTEE
DYER LIBRARY
RECREATION COMMITTEE
BOARD OF APPEALS
HISTORIC PRESERVATION COMMISSION

5 YEAR
PLANNING BOARD

FOR TOWN USE ONLY Date Application Received: 11-29-2021

COUNCIL COMMITTEE ACTION: _____ DATE: _____

COUNCIL ACTION: _____ DATE: _____

____ NEW APPT ____ REAPPOINTMENT DATE APPOINTMENT EXPIRES: 12/31/2023

Rev. 02/16/2017

Resume

LIONEL E. EL-HAJJ

113 Western Avenue, Hampden, ME 04444
207~~-991-4915~~
207 596 - 6863
Clonnie EL-Hajj

Summary:

Extensive construction management from project conception to final production. Cultivated relationships with vendors, architects, State of Maine DEP Engineers and customers. Managed and supervised multiple sub-contractors throughout building process. Started and operated a successful building company, El-Hajj Construction.

Professional Experience:

April 2013 - April 2014	**Brewer Planning Board**
June 1999 - November 2001	**Clerk of the Works** Project: Hampden Municipal Building, Hampden, Maine
July 1998 - November 2001	**Warrantee Repair Technician** Projects: Fleet Manufactured Housing covering ME, NH, VT
June 1997 - July 1999	**Project Manager** Projects: Penobscot Company, Camden, ME doing various construction projects.
1981	**Foreman** Project: Associated Contractors of New England doing addition to Jackson Lab, Bar Harbor, ME
September 1981 - November 2001	**Self-Employed** Projects: El-Hajj Construction did Residential and Commercial Building and Finish Carpentry.

Skills:

- Residential Design
- Manufactured Housing Repair including structural, appliance, plumbing and furnace repair
- Finish Carpenter
- Heavy Equipment Operator
- Construction Management
- Class One License
- EMT and Fire Fighting Training

Professional Training:

- Logistics Management Course - AGC Cianbro
- Project Management Course - AGC Cianbro
- Manufactured Housing Repair Course

References Available Upon Request

I suffered a stroke in November 2001 and now use a wheelchair. I can no longer do physical construction, although I can walk short distances with the use of a cane. I am able to do supervisory work and project planning and have kept up with recent construction developments. My vision is good and I can use a computer.

I oversee the apartment building where my wife and I live. I have reliable transportation, although I no longer drive. I can provide medical information if requested.

Jake Armstrong
to me

To whom it may concern

I am writing to inform you of my decision to resign my position on the planning board effective date to be determined. My other commitments have become to great for me to be able to fulfill the requirements of
my position on the Board, and I feel it is best for me to make room for someone with the time and energy to devote to the job.
It has been a pleasure being a part of the board.
If I can be of any assistance during the time it will take to fill the position, please don't hesitate.

Best regards,
Jake Armstrong

H - a

Edythe L. Dyer Community Library

269 Main Road North, Hampden, Maine 04444 • (207) 862-3550

To: Paula Scott

November 29, 2021

From: Debbie Lozito

Subject: Request for Reserve Funds

I am requesting funds from the library reserve account 3-763-00 to pay Avalon Village owners Association statement dated 11/19/21 for pump station charges.(see attached)

Thank you for your consideration,

Debbie Lozito, library director

Avalon Village Owners Association
50 Foxglove Drive
Suite 11
Hampden, ME 04444

Statement

Date
11/19/2021

To:

Edythe Dyer Library
269 Main Road
Hampden, Me. 04401

Due Date	Amount Due
11/19/2021	$620.21

Date	Transaction	Item	Quantity	Rate	Amount	Balance
12/31/2013	Balance forward					50.93
01/10/2014	PMT #3779.				-50.93	0.00
12/29/2016	INV #5319.				208.61	208.61
	Shared Septic Charges (Pump Station) 2013-2016					
	=== Reimb Group					
	--- Berry's Septic Service Pump Station Service-billed separately and paid $25.43					
	--- 2/70 $8.21					
	--- Berry's Septic Service Pump Station Service-billed separately and paid $25.43					
	--- Berry's Septic Service Pump Station Service-billed separately and paid $24.57					
	--- 2/70 $37.71					
	--- Inv.# 083924 $16.43					
	--- inv. #952 $7.40					
	--- Inv.# 083947 $21.43					
	--- Inv.# 245565 $25.57					
	--- Inv.# 083794 $16.43					
	=== Total Reimbursable Expenses $208.61					

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	67.61	0.00	0.00	552.60	$620.21

Avalon Village Owners Association
50 Foxglove Drive
Suite 11
Hampden, ME 04444

Statement

Date
11/19/2021

To:

Edythe Dyer Library
269 Main Road
Hampden, Me. 04401

Due Date	Amount Due
11/19/2021	$620.21

Date	Transaction	Item	Quantity	Rate	Amount	Balance
02/28/2018	INV #7336. === Reimb Group --- Inv.# 133440 (Pump Station Repair) $19.29 --- Pump Station Repair 2/70 $6.12 --- Pump Station Maintenance (Orland Pump Repair) $30.82 --- Pump Station Repair (Orland Pump Repair) $19.29 --- Pump Station Repair 2/70 $4.72 --- Pump Station Repair 2/70 $42.36 --- Orland Pump Repair $19.29 === Total Reimbursable Expenses $141.89				141.89	350.50
12/30/2019	INV #11285. === Reimb Group --- Pump Station Repair $89.51 --- Pump Station service call $19.95 --- Vacuumed pump station $10.35 --- Pump replacement $47.33 --- Pump Station - pump rebuild $33.01 --- Nov Statement $1.95 === Total Reimbursable Expenses $202.10				202.10	552.60

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	67.61	0.00	0.00	552.60	$620.21

Avalon Village Owners Association
50 Foxglove Drive
Suite 11
Hampden, ME 04444

Statement

Date
11/19/2021

To:

Edythe Dyer Library
269 Main Road
Hampden, Me. 04401

Due Date	Amount Due
11/19/2021	$620.21

Date	Transaction	Item	Quantity	Rate	Amount	Balance
11/12/2021	INV #15231. === Reimb Group --- 11956-1 Pump Station $1.08 --- 11956-1 Pump Station $1.59 --- Pump station - clean & re-install pump 11-19-20 $9.05 --- 11956-1 Pump Station $1.61 --- 11956-1 Pump Station $4.08 --- 11956-1 Pump Station $3.31 --- 11956-1 Pump Station $2.49 --- 11956-1 Pump Station $1.97 --- 11956-1 Pump Station $3.85 --- 11956-1 Pump Station $2.92 --- 11956-1 Pump Station $1.99 --- 11956-1 Pump Station $1.79 --- 11956-1 Pump Station $2.64 --- 11956-1 Pump Station $2.46 --- Clean pump - 10-25-21 $23.40 --- 11956-1 Pump Station $3.38 === Total Reimbursable Expenses $67.61				67.61	620.21

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	67.61	0.00	0.00	552.60	$620.21

H-6

Town of Hampden

Economic Development

MEMORANDUM

To: Town Council

From: Amy Ryder, Economic Development Director

Date: November 30, 2021

RE: Canoe/ Kayak storage

Harbor Master, Peter Neal, brought this to my attention after seeing what Belfast does at their waterfront. It is a very simple design of a storage unit to rent out small vessel space. I attached a picture of, and a copy of the application process that is used in Belfast. It is a straightforward process that we could mimic.

The estimated cost to build is between $500 - $600 and will paid for out of the Economic Development budget line. Public works has offered to build and transport the carrier.

We, Hampden, have been State approved for the LWCF grant funding in the amount of $115,000 for the addition of recreational trails and a canoe/kayak launch, and are waiting for federal approval. This rack/storage for small vessels would be a great addition to our waterfront now and even more so when a formal launch is created.

It is a valuable and affordable offering to residents and visitors to utilize Hampden's waterfront. I am here today for approval and to answer any questions or concerns.

Thank you,

Amy Ryder


12' wide
6' high
6' deep

City of Belfast
Non-Mooring Owner
Small Vessel Storage on City Property
2021 Contract for Kayak/Small Rowing Vessel Racks

Date_____

Name_____

Address: Mailing: _____

Physical_____

Resident of Belfast (maintain a permanent domicile for 183 days) Yes_____ **No**_____

Phone: Cell_____ **Home**_____

Emergency Contact:_____ **Phone**_____

Vessel: Type_____ **Length**_____ **Color**_____

Sticker Number Issued:_____ **Paid**_____

1) Storage

a. Small vessels such as kayaks, approved and permitted by the Harbor Master may be stored for a fee and the location assigned fairly by the Harbormaster based upon the limited number of locations and availability. Permit holders may be rotated from year to year to give others a chance to store vessels. The Harbormaster may employ a lottery system if there are too many applicants.

b. The owners of the permitted vessels are responsible for securing them and the City assumes no responsibility for watching them or being involved in their use. loss or damage as a result of securing a permit to place them in these racks. Any arrangement between owners to let others use their permitted vessels is entirely up to them and the City will not be involved in any way.

c. In all other respects the permitted vessel owners shall comply and be subject to the applicable rules and regulations of the Belfast Marine Activities Ordinance Chapter 30 et seq.

d. All permitted vessels shall have identification including owner name and contact number placed in a visible manner on the vessel.

2) Fees

All permitted small vessel owners will pay a fee and be issued a City of Belfast permit sticker from the Harbor Master's Office, which is to be placed in a visible manner on the vessel. Belfast residents will pay $50.00/season and non-Belfast residents will pay $75/season. The season shall be from May 15th to November 15th.

3) Removal

a. **All permitted vessels must be removed by December 1st.** Any vessel (like a mooring tender) left on City of Belfast property without permission of the Harbor Master will be removed by the City at a cost of $50.00 to the owner.

b. Any small vessel that is left sunk or awash for a period exceeding seven days shall be deemed abandoned. The vessel may be impounded by the harbormaster, and may be disposed of in the same manner as noted in Sec 30-96, subsection (b) of Belfast Marine Activities Ordinance Chapter 30 et seq. The City of Belfast shall not be liable for any damages sustained by an impounded vessel.

I hereby have read, understand, and will comply with the above regulations regarding small vessel storage on City of Belfast property:

Signed: _____ Date:_____

SMALL VESSEL STORAGE REQUEST LIST

SEASON 202____ Page____of____

$50.00 Belfast Residents $75.00 non-Belfast Residents

DATE	STICKER NUMBER	NAME	Belfast Resident? 180 day residency	STORED LAST YEAR?	PHONE	VESSEL TYPE	AMOUNT PAID

Gayle Decker <clerk@hampdenmaine.gov>

Items for Small Vessel topic for 12/6 meeting

2 messages

Amy Ryder <aryder@hampdenmaine.gov> Tue, Nov 30, 2021 at 10:44 AM
To: Gayle Decker <Clerk@hampdenmaine.gov>
Cc: Paula Scott <townmanager@hampdenmaine.gov>

Hi Gayle,
This is one topic for Monday's meeting, and I will be sending along a second shortly.

thanks,

Amy Ryder

Economic Development Director

Town of Hampden

106 Western Ave

Hampden, ME 04444

207-862-8223

2 attachments

small vessel.pdf
417K

Small Vessel.docx
34K

Gayle Decker <Clerk@hampdenmaine.gov> Tue, Nov 30, 2021 at 10:49 AM
To: Amy Ryder <aryder@hampdenmaine.gov>

Thank you Amy!
Gayle C. Decker, Town Clerk & Registrar of Voters
Town of Hampden
106 Western Avenue
Hampden, Maine 04444
Telephone: 207-862-3034 Ext 136
Fax: 207-862-5067
Notary Public

[Quoted text hidden]

H-C

Town of Hampden

Economic Development

MEMORANDUM

To: Town Council

From: Amy Ryder, Economic Development Director

Date: December 1, 2021

RE: Bluewave Ground Lease Agreement

The summer of 2020 council approved an option to lease agreement with Bluewave energy. They have worked diligently to get all licensing and approvals done to create a 36-acre solar array on the LL Bean parcel. They were approved for a major site plan by our planning board on November 10th, 2021.

Attached you will find the formal ground lease agreement for your review. We have had legal review the document prior to this meeting.

This is an opportunity for you to ask questions prior to signing.

Thank you,

Amy Ryder

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (*this "Lease"*) is dated as of _____, 202__. This Lease is by and between **Town of Hampden**, which has an address of 106 Western Avenue, Hampden, ME 04444 (*"Landlord"*) and **BWC Jimmie Pond, LLC,** a Delaware limited liability company, and/or its assigns, with a principal office at P.O. Box 171381, Boston, MA, 02117 (*"Tenant")* (and, together with "Landlord" each, a "Party" and together, the "Parties").

Landlord, for and in consideration of the rents, covenants and agreements contained in this Lease on the part of Tenant, its successors and assigns, agrees to and does hereby lease to Tenant, and Tenant agrees to and does hereby lease from Landlord, subject to the terms and conditions of this Lease, an approximately 31 acre exclusive leasehold estate located on a portion of the parcel of land owned by the Landlord which parcel is more fully described in the deed recorded at the Penobscot County Registry of Deeds at Book 9616, Page 287 (the "*Property*"), located off of Route 202, Hampden, Penobscot County, Maine, which leased premises is more fully and legally described on **Exhibit A** and depicted on **Exhibit A-2**, both of which are attached to this Lease and incorporated herein by reference (*the "Leased Premises"*), together with ingress, egress, and utility easements providing access to and from a public road (Route 202) to the point of utility interconnection, for the purposes of installing, operating, maintaining and removing a solar electric generating facility, which includes but is not limited to photovoltaic solar panels, mounting systems, inverters, transformers, integrators, equipment containers, batteries, storage systems and electrical lines, cables and conduits required to generate, collect, distribute store, and transmit electrical energy, and such additional utility lines, cables, conduits, transformers, wires, meters, monitoring equipment, and other necessary and convenient equipment and appurtenances common to such a facility *("Solar Facility"*).

TOGETHER with the right to use, in common with Landlord, all easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining thereto.

TO HAVE AND TO HOLD the aforesaid Leased Premises and appurtenant interests unto Tenant for the Term (as defined in **Exhibit B**).

1. **Recitals; Definitions.** The Recitals set forth above and the Exhibits attached to this Lease are each incorporated into the body of this Lease as if set forth in full. All capitalized terms not defined in the body of this Lease shall have the meaning as set forth in **Exhibit B** attached hereto.

2. **Term of Lease.** The lease term shall be as follows:

    a. An "*Initial Term*" commencing on the Effective Date and expiring upon the Commercial Operation Date ("*COD*") (as defined in **Exhibit B**). Tenant and Landlord agree to promptly execute a memorandum confirming the COD. Notwithstanding the foregoing, if the Effective Date falls on any day other than the first day of a calendar month then the Initial Term of this Lease will be measured

from the first day of the month following the month in which the Effective Date occurs.

b. The "*Primary Term*" shall be for a period of twenty (20) years commencing on the COD.

c. A "*Final Term*" commencing upon expiration of the Primary Term or last Renewal Term (as defined below), if any, to allow for Tenant's decommissioning and removal of the Solar Facility. The Final Term shall last no longer than a period of six (6) months, unless extended per mutual written agreement of Tenant and Landlord.

d. Tenant shall have the right, in its sole discretion, to elect to extend the Primary Term for up to four (4) five (5) year extensions (such extensions referred to as "*Renewal Terms*"). Tenant shall provide Landlord with written notice of its election to exercise the Renewal Term option on or before the expiration of the Primary Term or the then-current Renewal Term, as applicable.

3. Rent. As consideration for Landlord leasing the Leased Premises to Tenant, Tenant agrees to pay during the Term to Landlord in lawful money of the United States of America, Basic Rent as follows:

a. Commencing on the earlier of the Construction Start Date or the third (3) anniversary of the Effective Date, and expiring the earlier of Commercial Operation (as defined in **Exhibit B**) or one (1) year from the commencement of the Construction Phase (as defined in **Exhibit B**), Tenant shall pay to Landlord annual rent of Two Thousand ($2,000.00) Dollars per megawatt (DC) of power planned and permitted to be installed ("*Monthly Phase Rent*"), payable to Landlord, in advance, in equal installments at the beginning of each calendar month.

b. Commencing on the earlier of the date of commencement of Commercial Operation ("*Commercial Operation Date" or "COD*") or one (1) year from the Construction Start Date and expiring on the later of the expiration of the Final Term or expiration of the Renewal Term, if any, or earlier termination of this Lease, Tenant shall pay the annual rent of Five Thousand ($5,000.00) Dollars per megawatt (DC) of Installed Power ("*Quarterly Phase Rent*") to Landlord, in advance, in equal quarterly installments at the beginning of each calendar quarter. Beginning on the first (1st) anniversary of the earlier of the COD or one (1) year from the Construction Start Date and recurring annually thereafter throughout the Term, the Quarterly Phase Rent shall increase by One and One Half (1.5%) Percent per annum based on the rent amount in the immediately preceding year.

c. The Parties agree to execute commencement agreements to memorialize the Construction Start Date and the COD.

d. Any payment due under this Lease shall be timely if it is made on the due date or within thirty (30) calendar days of the due date.

e. Tenant may pay Basic Rent or other sums due under this Lease (sometimes collectively referred to herein as the "*Rent*") by check, Automated Clearinghouse transfer or wire transfer, and Landlord shall provide to Tenant on or before the Effective Date current payment instructions for the payment method selected by the Tenant.

4. Solar Facility.

a. At all times while this Lease is in force and effect, all rights to, title to and possession of the Solar Facility (including without limitation, all additions, alterations, and modifications thereto or replacements thereof, all appurtenant fixtures, machinery and equipment installed therein), all electrical output from the Solar Facility, Environmental Attributes and Solar Incentives belong solely to Tenant and shall remain the personal property of Tenant and shall not attach to or be deemed a part of, or fixture to, the Leased Premises. The Solar Facility shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as adopted in the State as the Maine Uniform Commercial Code as set forth in Title 11 of the Maine Revised Statutes, as amended, or any replacement or successor statute or code. To the extent applicable, this document shall constitute an agreement pursuant to 33 M.R.S.A. §455. "*Environmental Attributes*" shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products. "*Solar Incentives*" includes tax credits, benefits or incentives for alternative energy expenditure established by any federal, State or local government for the production of electricity, including without limitation, any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies.

b. It is the express intent of each Party that the Solar Facility is and be treated as the personal property of Tenant and not as a fixture to the real estate nor as part of Landlord's interest in the real estate.

c. Landlord hereby waives any lien, security interest, rights to levy, distraint, possession, Landlord's lien and all other claims of any nature that Landlord now has or may hereafter have by statute, rule, regulation, common law, agreement or otherwise, in and to the Solar Facility, if any, and Landlord shall not cause the creation of, or attachment to the Solar Facility of any liens (including mechanics' and judgment liens) or other encumbrances. Any lien or encumbrance upon the

Leased Premises, arising from any act or omission of Landlord, shall accrue only against the real estate owned by Landlord, and not against the Solar Facility, and shall be subject to this Lease. If any such lien or encumbrance shall be filed against the Solar Facility or Leased Premises as a result of Landlord's actions or inactions, Landlord shall, without cost or expense to Tenant, promptly and within a reasonable time cause such lien or encumbrance to be discharged of record by payment, statutory lien release bond, court order or otherwise as provided by law. Landlord shall not permit any sale, foreclosure or forfeiture of the Leased Premises by reason of nonpayment of a lien caused by Landlord or anyone claiming by or through Landlord. Landlord shall immediately notify Tenant of, and send Tenant a copy of, any notice Landlord receives claiming that Landlord is late or in default of any obligation that could result in a lien or encumbrance against the Leased Premises or the Solar Facility.

d. Tenant, at its sole cost and expense, shall operate and maintain the Solar Facility in accordance with Section 7 hereof.

e. During the Initial Term, Tenant and its employees, agents and contractors shall have a non-exclusive right to enter upon the Property outside the Leased Premises and the right of ingress and egress over and across the Property outside the Leased Premises for the purpose of (i) surveying the Leased Premises, (ii) performing such other tests and studies as Tenant may desire in connection with the development of the Solar Facility, including, without limitation, environmental, noise, avian and cultural resource assessments, and geotechnical, foundation and soil tests, and (iii) installing, maintaining, operating, inspecting and removing one or more solar monitoring devices and all associated activities, including the Weather Instruments (defined below) and including the performance of all tests and studies associated therewith. "*Weather Instruments*" shall mean ground-based instruments (including Sonic Detection and Ranging ("*SODAR*") instruments) used primarily to gather and transmit meteorological data relating to the solar project, and includes meteorological data acquisition equipment, power source, and any required data and electrical transmission lines. Landlord shall reasonably cooperate with all of Tenant's due diligence efforts during the Development Period, including environmental due diligence, provided that such cooperation does not cause Landlord to incur any expenditure (unless Tenant shall reimburse Landlord for any such expenditure). After its investigations of the Property during the Initial Term, Tenant shall restore the Property outside the Leased Premises, at Tenant's sole cost and expense, substantially to its condition immediately prior to Tenant's inspections, wear, tear and casualty damage excepted.

f. During the Initial Term, Tenant shall have the right, but not the obligation, to clear trees and saplings on the Property outside the Leased Premises for the purpose of testing the viability of the solar resource prior to commencement of construction, subject to any required approvals by any Governmental Authorities (as defined in

Exhibit B) and to Landlord's prior approval, which shall not be unreasonably withheld, conditioned or delayed.

g. Landlord shall provide to Tenant, upon Tenant's written request, any of the following in Landlord's possession or control, within forty-five (45) days following the Effective Date: (1) any notice of violation of any law or regulation, including zoning laws applicable to the Property, (2) any "Phase I" and other environmental assessment reports regarding the Property, (3) Landlord's most recent survey and title insurance policy relating to the Property, (4) any governmental permits, licenses or approvals for the Property, (5) tax bills, contracts and agreements relating to the Property, and (6) any other surveys, physical condition reports, notices regarding zoning or government action with respect to the Property.

h. Landlord acknowledges that Tenant may obtain, at Tenant's expense, a title insurance policy insuring Tenant's leasehold interest in and access to the Premises. Landlord agrees to reasonably assist Tenant in obtaining such title policy by supplying any information reasonably requested by the title insurance company in connection with issuing such title policy and to cooperate with Tenant in curing any title defects which may affect Tenant's use of the Premises for the Permitted Use (as defined in Section 9) provided that such assistance and cooperation does not cause Landlord to incur any out-of-pocket expenditure in excess of $2,500.00.

i. Tenant shall have the right, at any time and from time to time during the Term, at its expense, to (i) install, operate, maintain, make additions, changes, alterations, or modifications, structural or otherwise, to the Solar Facility; and (ii) remove or demolish the Solar Facility or any other structures hereafter located on the Leased Premises.

j. Tenant shall have the right to place one or more signs advertising the Solar Facility provided that, prior to putting up any such signage, Tenant has obtained all required sign permits from Governmental Authorities. Landlord shall, at Tenant's request and at no expense to Landlord, fully cooperate with Tenant in its efforts to obtain same.

5. Impositions.

a. Throughout the Term, Tenant shall pay, or cause to be paid, all Impositions (as defined in **Exhibit B**) associated with the Solar Facility, except that Impositions assessed for fiscal periods of the taxing authority which extend beyond the Term shall be apportioned between Landlord and Tenant at the expiration of the Term. Landlord shall promptly forward to Tenant all notices, bills or other statements received by Landlord concerning any Imposition, including notices pursuant to 36

M.R.S.A. Sec. 941, 942 and 943 or unpaid tax assessments against the Property. Tenant shall pay all such Impositions associated with the Solar Facility directly to the taxing authority (or, alternatively, to the Landlord as agreed by the Parties in which event Landlord shall pay the Impositions to the taxing authority) as the same become due and payable and before any fine or penalty is added thereto for the nonpayment thereof. Tenant may pay any Imposition (including any interest accrued on the unpaid balance of such Imposition) in installments if so payable by law, whether or not interest accrues on the unpaid balance.

Landlord shall pay when due during the Term of the Lease (i) all personal property taxes attributable to improvements or facilities installed by Landlord or others (excluding Tenant) on the Property, if any, (ii) all real estate taxes attributable to the Property, if any, and (iii) any governmental fees, costs and charges related to the Property but unrelated to the Solar Facility on the Property **("*Landlord's Taxes*")**. If Landlord is to pay the taxing authority and fails to do so when due, Tenant has the right but not the obligation to pay same. If Tenant does pay Landlord's Taxes, Tenant shall be permitted to offset such costs against Rent until fully reimbursed.

b. Tenant shall have the right in its own name to contest the validity or amount, in whole or in part, of any Imposition (including a reduction in the assessed valuation of the Leased Premises) by appropriate proceedings timely instituted, provided such contest effectively stays or prevents any official or judicial sale of the Leased Premises or any part thereof by reason of nonpayment of any Imposition. Landlord shall, at Tenant's request and expense, fully cooperate with Tenant in all reasonable ways to contest any Imposition. Any refund payable as a result of any such proceedings on account of Real Estate Taxes (as defined in **Exhibit B**) or other Impositions paid by Tenant and attributable to a period of time during the Term shall be the property of Tenant.

c. Notwithstanding anything to the contrary contained herein, in the event the Landlord demonstrates within five (5) business days after receipt of a tax bill that the development of the Solar Facility on the Leased Premises results in an increased tax liability imposed by the State and/or local taxing authorities for the Leased Premises (including but not limited to any increase in real estate tax resulting from the release of the Leased Premises from Tree Growth and/or Open Space classifications (36 M.R.S.A. Sec. 571-584-A and 36 M.R.S.A. Sec. 1101-1121), throughout the duration of the Lease until the expiration of the Final Term, Tenant agrees to pay such increased assessed tax liability to the municipal and/or State taxing authority or to the Landlord as agreed by the Parties.

d. Notwithstanding anything contained in this Lease, (i) Tenant shall not be under any obligation to pay any part of any franchise, excise, estate, inheritance, income or similar tax which is or may become payable by Landlord or which may be imposed against Landlord on any Basic Rent or any other payments payable pursuant to the

Lease or upon the income or profits of Landlord by reason of any law now in force or later enacted, and (2) in the event the Leased Premises are re-assessed for tax purposes because of transfer of ownership of the Property (or any portion thereof) during the Term, Tenant shall not be responsible for payment of any increase in real estate taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of Landlord.

6. Insurance.

a. At all times during the Term of this Lease, Tenant shall maintain, at Tenant's cost and expense, in full force a comprehensive public liability insurance policy covering Tenant's operations, activities, and liabilities on the Leased Premises, having singly or in combination limits not less than One Million Dollars ($1,000,000) in the aggregate. Such policy shall include Landlord as an additional insured under such policy as the Landlord's interests may appear under this Lease. Upon Landlord's request, Tenant shall give Landlord a certificate of insurance evidencing that the insurance required under the Lease is in force.

b. At all times during the Term of this Lease, Landlord shall maintain, at Landlord's cost expense, in full force a comprehensive public liability insurance policy covering Landlord's operations, activities, and liabilities on the Property, having singly or in combination limits not less than One Million Dollars ($1,000,000) in the aggregate. Such policy shall include Tenant as an additional insured under such policy as the Tenant's interests may appear under this Lease. Upon Tenant's request, Landlord shall give Tenant a certificate of insurance evidencing that the insurance required under the Lease is in force.

c. Landlord and Tenant each hereby waives any right of recovery against the other and the authorized representatives of the other for any loss or damage that is covered or required by this Lease to be covered by any policy of insurance maintained with respect to the Property, the Leased Premises or any operations therein, even though such loss or damage might have been occasioned by the negligence of such party. Each party shall cause its insurers issuing insurance policies relating to this Lease, the Property, the Leased Premises or the Solar Facility to provide that such insurers waive all right of recovery by way of subrogation against the other party in connection with any claim, loss or damage covered by such policies.

7. Alterations by Tenant; Maintenance by Tenant; Mechanic's Liens.

a. Tenant may at any time, or from time to time, at its sole cost and expense and without obtaining the consent or approval of Landlord, construct the Solar Facility, and make changes, alterations, additions, or modifications, including reconstruction to and removal of all or part of the Solar Facility, access and utilities, or any part thereof (collectively the "*Alterations*"); provided, however, that such Alterations shall be

performed in a good and workmanlike manner and shall comply with all Legal Requirements (as defined in **Exhibit B**). In furtherance, but not in limitation, of the foregoing, Landlord acknowledges that Tenant intends to construct a photovoltaic solar energy generation and transmission facility on the Leased Premises, a security fence and driveway made of pervious material (i.e., earth, crushed stone, gravel). Tenant shall have no obligation to construct or reconstruct the Solar Facility or any part thereof nor to maintain the Solar Facility in any particular condition or state of repair so long as the Solar Facility complies with all Legal Requirements. All insurance proceeds paid on account of any damage or destruction under the insurance policies maintained by Tenant shall be paid to the Tenant.

b. Tenant shall comply with all Legal Requirements and shall, within sixty (60) days after receipt by Tenant of Landlord's notice, discharge, by the filing of a bond or otherwise, any mechanic's, materialman's or other lien asserted against the Leased Premises by reason of the making of any Alterations.

c. For any access Easements granted to Tenant which are located outside the Leased Premises, as discussed more fully in Section 12(e) below, each Party shall have the right, but not the obligation, to maintain the areas within such Easements to the extent necessary for its own use; however, Tenant is responsible for any and all damage to areas within such Easements to the extent caused by Tenant or its employees, agents or contractors.

d. Tenant may provide all security measures that Tenant determines are or may be reasonably necessary for the Solar Facility. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the Solar Facility or injury or damage to persons or property resulting from the Solar Facility and/or the operation thereof.

8. Repairs, Maintenance by Landlord

a. Landlord shall not be required to furnish any services or facilities or to make any necessary repairs or alterations in or to the Leased Premises, Solar Facility, roadways exclusively used by Tenant.

b. Landlord shall have the right, but not the obligation, to maintain and to use the areas within any non-exclusive access Easements, as discussed more fully in Section 12(e) below, granted to Tenant for its use; however, Landlord is responsible for any and all damage to areas contained within such non-exclusive Easements to the extent not caused by Tenant or its employees, agents or contractors.

c. As more fully set forth in Section 12 below, Landlord shall not construct structures or plant trees adjacent to the Leased Premises that will impede solar access to the Solar Facility.

9. <u>Use of Leased Premises by Landlord and Tenant; Access; Compliance with Legal Requirements</u>

a. Tenant shall have the exclusive right during the Term to use and occupy the Leased Premises for a Solar Facility and any other lawful related purpose, including but not limited to entering into related utility agreements; and to make all necessary governmental and quasi-governmental filings for the Leased Premises. Tenant's use shall include, without the necessity of notice to Landlord or securing Landlord's prior consent or permission, and without limitation, due diligence for and the construction, operation and removal of the Solar Facility (collectively, *the "<u>Permitted Use</u>"*).

b. Tenant shall have 24/7 access to the Leased Premises and for pedestrians, vehicles and utility lines to the nearest public road(s) maintained by the Governmental Authorities to the Leased Premises. Additionally, if applicable, Tenant shall have a non-exclusive Easement for access to the Leased Premises through, on, over and under any Private Roads (as defined in **Exhibit B**), whether the Private Roads are currently existing or constructed after the Effective Date. Notwithstanding anything in this Lease to the contrary, and subject to Tenant's other rights contained herein, if for any reason caused by Landlord's action or failure to act, Tenant is prevented from reasonable access to the Leased Premises for the purposes set forth in this Lease, Landlord shall take all necessary and reasonable steps to remove any such impediment to access and, if required by Tenant, Landlord shall promptly provide an alternate means of access to the Leased Premises that is reasonably acceptable to Tenant.

c. Tenant shall, throughout the Term, comply with all Legal Requirements now or hereafter applicable to the Leased Premises and the Solar Facility. Tenant shall have the right to contest any Legal Requirements and postpone compliance therewith until the final determination of such contest, provided that the contest is prosecuted with due diligence and the postponement of compliance does not result in the imposition of any liens on the Leased Premises or the Solar Facility, subject Landlord to any fine or penalty or to prosecution for a criminal act, or cause the Leased Premises, or any part thereof, to be condemned or vacated. Landlord agrees to cooperate with Tenant at no expense to Landlord throughout Tenant's permitting process and compliance process.

d. Tenant shall not be responsible for, and Landlord shall retain full responsibility for, any violation of any Legal Requirements with respect to the Property (excluding the Leased Premises), or caused by Landlord or by Landlord's affiliates, officers, employees, agents, contractors, or licensees.

10. Condemnation.

a. If, at any time during the Term, the whole of the Leased Premises is taken for any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate. If this Lease terminates, it shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the Leased Premises so taken ("*Date of Taking*"). In such event, Rent and all other charges payable hereunder shall be prorated and paid to the Date of Taking.

b. If, at any time during the Term, more than ten percent (10%) of the square footage of the Leased Premises, or other access way which is necessary for access to the Leased Premises, is taken for the purposes set forth in subparagraph (a), above, and Landlord cannot provide additional square footage or alternative access, Tenant shall have the right to terminate this Lease. If Tenant so elects to terminate this Lease, it shall terminate as of the Date of Taking and Tenant shall give written notice of such termination to Landlord within one hundred twenty (120) days after the date of Tenant's receipt of notice of such taking. In such event, Basic Rent and all other charges payable hereunder shall be prorated and paid to the date of termination.

c. If the whole or a part of the Leased Premises is taken by condemnation, Landlord shall have the unqualified right to pursue its remedies against the condemnor for the full value of Landlord's fee interest and other property interests in and to the Leased Premises. Similarly, Tenant shall have the unqualified right to pursue its remedies against the condemnor for the full value of Tenant's leasehold interest, the Solar Facility and other property interests of Tenant in and to the Leased Premises, business interruption, loss of goodwill and relocation and moving costs and Landlord will cooperate with same at no cost or expense to Landlord. Neither Landlord nor Tenant shall enter voluntarily into any binding agreement of settlement related to a taking without the prior consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. If the laws of the State allow or require the recovery or award from the condemnor to be paid into a common fund or to be paid to Landlord only, and if such recovery or award is so paid into a common fund or to Landlord only, then the recovery or award so paid shall be apportioned between the Parties according to the value of their respective property interests as they existed on the Date of Taking, giving due consideration to the size of the Leased Premises, the Solar Facility, the number of years remaining in the Term and the condition of the Solar Facility on the Leased Premises. If the recovery or award from the condemnor is paid into a common fund or paid to Landlord only, then the Tenant shall be entitled to that portion of such award given for the value of the Solar Facility, Tenant's relocation expenses and other expenses of Tenant included within such recovery or award. Except for Tenant's leasehold interest in

the Leased Premises (which will be apportioned in accordance with this Section), Tenant shall not be entitled to share in any separate award made to Landlord for the value of any land owned by Landlord, which is the subject of the taking. Landlord shall not be entitled to share in any separate award made to Tenant for the value of the Solar Facility, Tenant's relocation expenses, and Tenant's other expenses. The provisions of this subparagraph (c) shall survive any termination of this Lease pursuant to the provisions of subparagraphs (a) or (b).

d. If, at any time during the Term, a part of the Leased Premises is taken by condemnation and Tenant is not entitled to or does not exercise its right to terminate, this Lease shall continue in full force and effect, except that Basic Rent and Additional Rent (as defined in **Exhibit B**) shall be reduced as of the Date of Taking, so that for the remainder of the Term, Tenant shall pay only such portion of the Basic Rent and Additional Rent as the rental value of the part remaining after condemnation bears to the rental value of the entire Leased Premises at the Date of Taking. Tenant shall perform the construction, repair, alteration or restoration of the remaining part of the Leased Premises and Solar Facility so that they are suitable for the Permitted Use; provided, however, that the condemnation award shall be promptly made available to Tenant to pay for such repairs and Tenant shall not be obligated to expend an amount greater than the amount awarded to Landlord and Tenant on account of the taking of a portion of the Solar Facility, exclusive of that portion of the award attributable to real property taken. If the amount awarded to Landlord and Tenant on account of the taking is not sufficient to permit Tenant to so alter, repair, and restore the Leased Premises and Solar Facility, Tenant shall notify Landlord of such deficiency within ninety (90) days after the Date of Taking and Landlord may elect to contribute the amount of the deficiency to the cost of the repair and restoration or Tenant may terminate this Lease. Landlord shall notify Tenant of its election within thirty (30) days after the date on which Landlord receives the notice of deficiency from Tenant. If Tenant elects to terminate the Lease, the termination shall be effective as of the Date of Taking and all Basic Rent, Additional Rent and other charges payable hereunder shall be prorated and paid to the date of termination. The condemnation award received by Landlord and Tenant shall be allocated as set forth in subparagraph (c) above.

11. Force Majeure.

a. "*Force Majeure Event*" means any act or event that prevents or delays the affected Party from performing its obligations or due diligence in accordance with this Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (*including the expenditure of reasonable sums*). Subject to the foregoing conditions, a Force Majeure Event shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, excessive snowfall, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated

to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, pandemic, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of a Party or as a result of such Party's failure to comply with a collective bargaining agreement or labor trouble, (v) pandemics, epidemics or other widespread health emergencies, as well as related restrictive governmental laws or regulations; and (vi) action by any public or quasi-public authority causing a moratorium on any activities related to this Lease; and (vii) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any approval, by any public or quasi-public authority, having jurisdiction, necessary to enable the affected Party to develop the Leased Premises, or fulfill its obligations or due diligence in accordance with this Lease, provided that the delay or inability to obtain such approval is not attributable to the Party in question and is not as a result of a denial by any such authority of an application for such approval and that such Party has exercised its reasonable efforts to obtain such approval. A Force Majeure Event shall not be based on the economic hardship of either Party.

b. Except as otherwise specifically provided in this Lease, neither Party shall be considered in breach of this Lease or liable for any delay or failure to comply with this Lease if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations, due diligence or development hereunder as soon as reasonably practicable thereafter.

c. Anything to the contrary in this Lease notwithstanding, a Term shall be tolled during a Force Majeure Event until the Parties resume performance of their obligations, due diligence or development hereunder as provided in this Section.

12. Ingress, Egress, Utility and Solar Easements. The rights granted to Tenant in this Lease include, without limitation the following easements and related rights (collectively, "*Easements*"):

a. the exclusive right to erect, construct, reconstruct, repair, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Leased Premises and Surrounding Property, in connection with Solar Facility, with all necessary easements therefor: (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers,

wires and cables (collectively "*Transmission Facilities*"); and (b) facilities consisting of one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service the Solar Facility, regardless of where located (collectively "*Interconnection Facilities*");

b. a non-exclusive easement and right over and across the Property, or any Surrounding Property adjacent to the Leased Premises for any audio, visual, view, light, flicker, shadow, noise, vibration, air turbulence, wake, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Solar Facility, including but not limited to rights to cast shadows and reflect glare onto all of the Surrounding Property, from the Solar Facility and/or any and all other related facilities, wherever located;

c. an exclusive easement pursuant to 33 M.R.S.A. §1401, et seq., on, over and across the Property for the purpose of ensuring access to direct sunlight to any solar panels on the Leased Premises and an exclusive easement prohibiting any obstruction of direct sunlight throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360º) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "*Site*") and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180º) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property;

d. a non-exclusive easement and right on the Surrounding Property to prevent and fire and electrical hazards now or hereafter existing on the Surrounding Property which might obstruct receipt of or access to sunlight throughout the Leased Premises or interfere with or endanger the Solar Facility or Tenant's operations;

e. a non-exclusive access easement over and across the Surrounding Property to the Leased Premises as described on **Exhibit A-1** and depicted on **Exhibit A-2** for ingress and egress to the Solar Facility and Leased Premises, to and from a public road, and, if applicable, for construction and maintenance of the fence and Transmission Facilities and Interconnection Facilities;

f. a non-exclusive easement to be located at a mutually acceptable location on a portion of the Surrounding Property to be used for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of

construction crew vehicles and temporary construction trailers, (iv) vehicular and pedestrian access and access for rigging and material handling, and (v) other facilities reasonably necessary to construct, erect, install, expand, modify or remove the Solar Facility. In the event that Tenant disturbs the surface of the Surrounding Property in connection with the exercise of its rights under this easement, Tenant will, at its sole expense, restore the surface of such areas so-disturbed to substantially the same or better condition as existed prior to such disturbance.

Tenant has the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Leased Premises. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Leased Premises is prohibited. Landlord shall not construct buildings or structures, plant trees or vegetation of any type or allow any trees or other vegetation on the Surrounding Property which now or hereafter in the reasonable opinion of Tenant may be a hazard to the Solar Facility, overshadow or otherwise block, shade or interfere with access of sunlight to the Solar Facility, interfere with the sunlight direction over any portion of the Leased Premises, cause a material decrease in the output or efficiency of the Solar Facility, cause a disturbance to the subsurface that damages or interferes with the structural integrity of the Solar Facility or otherwise interfere with Tenant's operation of the Solar Facility or exercise of Tenant's rights hereunder. Landlord and Tenant hereby acknowledge that Tenant shall have the right (but shall not be obligated) to remove, at Landlord's cost, any such buildings or other structures in violation of the preceding sentence. Any such costs incurred by Tenant shall be reimbursed by Landlord within thirty (30) days from receipt of notice and documentation verifying the costs owed to Tenant. Notwithstanding anything contained to the contrary herein, Tenant may elect to offset such costs against Rent due by Tenant under this Lease until fully reimbursed.

The Parties expressly agree that the easements and related rights granted by Landlord to Tenant in this Lease shall be transferable in accordance with Section 15 herein. The burdens of the Easements and related rights granted to Tenant in this Lease shall be appurtenant to the Leased Premises and shall run with and against the Property, shall be a charge and burden on the Property and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, lessees, employees and agents. If the Landlord conveys the Leased Premises or Surrounding Property during the Term, Landlord agrees that any sale shall be subject to the terms of this Lease and the granting document(s), including the deed, shall include within the property description, the existence of the Easements contained herein.

The term of the Easements described in this Section 12 shall commence upon the Effective Date and shall continue until the last to occur of (i) expiration of the Term, or (ii) removal by Tenant of the Solar Facility, Transmission Facilities and Interconnection Facilities from the Leased Premises after expiration of the Term. Additional details concerning the location and configuration of the Easements set forth in this Section 12 shall, at the option of Tenant, be set forth in a recordable instrument prepared by Tenant, which Landlord agrees to execute, and have notarized, within ten (10) days of any Tenant request therefor made from time to time. In addition, at Tenant's request and expense, the Easements

described in this Section 12 may be set forth in a separate standalone Easement agreement, which Landlord and Tenant agree to execute, and which Tenant shall have recorded as an encumbrance on the Property and binding upon all subsequent owners, successors, and assigns.

13. **Subordination, Non-disturbance and Attornment Agreement.** Within ten (10) days of the Effective Date, Landlord shall obtain a Subordination and Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Leased Premises and any necessary Easements. Tenant agrees that, if requested by Landlord, this Lease shall be subject and subordinate to any mortgages or deeds of trust hereafter placed upon the Leased Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust, provided that Landlord first delivers to Tenant a Subordination and Non-Disturbance Agreement from the holder of such lien or mortgage. Landlord agrees that any right, title or interest created by Landlord from and after the date hereof in favor of or granted to any third party shall be subject to (i) this Lease and all of Tenant's rights, title and interests created in this Lease, and (ii) any and all documents executed or to be executed by and between Tenant and Landlord in connection with this Lease. A "*Subordination and Non-Disturbance Agreement*" shall mean an agreement, in form substantially similar to the form attached hereto as **Exhibit E**, between Tenant, Landlord and the holder of a lien or a mortgage that provides that the holder of such lien or a mortgage (i) agrees not to disturb Tenant's possession or rights under this Lease, (ii) agrees to provide notice of breaches or defaults under the lien or mortgage documents to Tenant and agrees to allow Tenant and its Lenders a reasonable period of time following such notice to cure such breaches or defaults on behalf of Landlord, and (iii) agrees to comply with such other requirements as may be reasonably required by Tenant or its Lenders to ensure the interests of Tenant or its Lenders are not interfered with. Within ten (10) business days of the date of creation of any future mortgages or deeds of trust, Landlord shall provide a Subordination and Non-Disturbance Agreement from Landlord's Lenders in a form substantially similar to **Exhibit E** executed and acknowledged by Landlord and the holder of any mortgage to which this Lease is, or shall become, subordinate. If Tenant and Landlord are unable to obtain such agreements from any third party holding such an interest in the Property, Tenant shall be entitled (but not obligated), in addition to terminating this Lease, to make payments or performance in fulfillment of Landlord's obligations to such third party and may offset the amount of such payments or performance against Basic Rent and any other amounts due to Landlord.

14. **Mortgagee Protection**. Tenant may pledge, sell, grant and/or assign, sublease, mortgage and otherwise transfer this Lease or Tenant's leasehold interest in the Leased Premises in whole or in part, without Landlord's prior consent, in connection with financing or re-financing of the Solar Facility. Any Leasehold Mortgagee of the Leased Premises shall, for so long as its mortgage is in existence and until the lien thereof has been extinguished, be entitled to the following protections, upon delivery to Landlord of notice of its name and address:

a. Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Leased Premises or any portion thereof and to perform all obligations to be performed by Tenant under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Landlord's consent shall not be required for (1) the pledge, mortgage or hypothecation of Tenant's rights in the Lease, the Solar Facility, or Tenant, or (2) the acquisition of Tenant's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. As used in this Lease, (i) the term "*Mortgagee*" means any financial institution or other person or entity that from time to time provides secured financing for or otherwise encumbers some or all of Tenant's interest in the Lease, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated Lender involved in whole or in part in such financing, and their respective representatives, successors and assigns, (ii) the term "*Mortgage*" refers to the mortgage, deed of trust or other security interest in this Lease and/or the Solar Facility given to a Mortgagee in connection with such financing and (iii) the term "*Mortgaged Interest*" refers to the interest in this Lease and/or the Solar Facility, that is held by the Mortgagee.

b. Notice of Breach: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged breach by Tenant, Landlord shall give written notice of the breach to each Mortgagee concurrently with delivery of such notice to Tenant, as applicable, specifying in detail the alleged event of breach; provided however that such Mortgagee shall have provided Landlord with its current address. In the event the Landlord gives such a written notice of breach, the following provisions shall apply:

    i. A "*Monetary Breach*" means failure to pay when due any Basic Rent or other monetary obligation of Tenant to Landlord under this Lease. Any other event of default that is not a Monetary Breach is a "*Non-Monetary Breach*."

    ii. The Mortgagee shall have the same period after receipt of notice of breach to remedy the breach, or cause the same to be remedied, as is given to Tenant, plus, in each instance, the following additional time periods: (i) sixty (60) days after receipt of the notice of breach in the event of any Monetary Breach; and (ii) ninety (90) days after receipt of the notice of breach in the event of any Non-Monetary Breach, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such Non-Monetary Breach by obtaining possession of the Leased Premises (including possession

by a receiver) or by instituting foreclosure proceedings, and provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant under this Lease for purposes of curing such breach. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Leased Premises to complete such performance with all the rights, privileges and obligations of the Tenant. Landlord shall not terminate this Lease prior to expiration of the cure periods available to a Mortgagee as set forth herein.

iii. During any period of possession of the Mortgaged Interest by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the Basic Rent and all other monetary charges payable by Tenant under this Lease that have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of the Mortgaged Interest by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Mortgagee or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all breaches under this Lease and thereafter diligently process such cure to completion, whereupon Landlord's right to terminate this Lease based upon such breach shall be deemed waived; provided, however, the Mortgagee or party acquiring title to the Mortgaged Interest shall not be required to cure those Non-Monetary Breaches which are not capable of being cured or performed by such party ("*Non-curable Breaches*"). Non-curable Breaches shall be deemed waived by Landlord upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

iv. Any Mortgagee or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Leased Premises.

v. Neither the bankruptcy nor the insolvency of Tenant or any assignee shall be grounds for terminating this Lease as long as the Basic Rent and all other monetary charges payable by Tenant under this Lease are paid by the Mortgagee in accordance with the terms of this Lease.

vi. Nothing in this Lease shall be construed to extend this Lease beyond the Term or to require a Mortgagee to continue foreclosure proceedings after the breach has been cured. If the breach is cured and the Mortgagee discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

c. New Agreement to Mortgagee. If this Lease terminates because of Tenant's default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Landlord shall, upon written request from any Mortgagee, enter into a new lease of the Leased Premises, on the following terms and conditions:

i. The terms of the new agreement shall commence on the date of termination, foreclosure, or rejection of this Lease and shall continue for the remainder of the Term of this Lease, at the same rent and subject to the same terms and conditions set forth in this Lease. Such new agreement shall be subject to all existing subleases, provided the subtenants are not then in default.

ii. The new lease shall be executed within thirty (30) days after receipt by Landlord of written notice of the Mortgagee's election to enter a new lease, provided said Mortgagee: (a) pays to Landlord all Basic Rent and other monetary charges payable by Tenant, as applicable, under the terms of this Lease up to the date of execution of the new agreement, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the rent and other income actually collected by Landlord from subtenants or other occupants of the Leased Premises; and (b) performs all other obligations of Tenant under the terms of this Lease, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Tenant and would have accrued under this Lease up to the date of commencement of the new agreement, except those obligations which constitute Non-curable Breaches as defined above; and (d) reimburses Landlord for Landlord's reasonable attorney fees incurred in reviewing the same. Any such new agreement shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Landlord.

iii. At the option of the Mortgagee, the new lease may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of the Tenant thereunder.

iv. If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect. Landlord shall be reimbursed all reasonable expenses incurred in determining whose Mortgage is prior in lien.

d. Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Mortgage, this Lease shall not be modified or amended and Landlord shall not accept a surrender of the Leased Premises or any part thereof or a cancellation or release of this Lease from Tenant prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

e. No Waiver. No payment made to Landlord by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease, and a Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

f. No Merger. There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Leased Premises by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises and all persons (including Mortgagee) having an interest in this Lease or in the estate of Landlord shall join in a written instrument effecting such merger and shall duly record the same.

g. Third Party Beneficiary. Each Mortgagee is and shall be an express third-party beneficiary of the provisions of this Section and shall be entitled to compel the performance of the obligations of Landlord under this Lease.

h. Further Amendments. Provided that no material breach in the performance of Tenant's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Tenant's request, Landlord shall (i) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Mortgagee, or by any entity that is proposing to directly or indirectly acquire the Solar Facility, and (ii) shall execute such additional documents as may reasonably be required to evidence such Mortgagee's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Landlord under this Lease, or extend the Term of this

Lease. Further, Landlord shall, within ten (10) days after written notice from Tenant or any existing or proposed Mortgagee, execute and deliver thereto a certificate to the effect that Landlord (i) recognizes a particular entity as a Mortgagee under this Lease and (ii) will accord to such entity all the rights and privileges of a Mortgagee hereunder.

i. Further Amendments to Leased Premises Description. In the event that it is determined by Tenant or any Mortgagee that there are any inaccuracies in or changes required to the legal description of the Leased Premises contained herein, the validity of this Lease shall not be affected, and, upon the request of Tenant made from time to time, Landlord shall execute an amendment to the legal description of the Leased Premises contained in **Exhibit A** and/or of the right of way Easement contained in **Exhibit A-1** of this Lease and in any Memorandum of Lease (as defined in **Exhibit B**) to reflect the legal description of the Leased Premises as contained in any survey obtained by Tenant for the Leased Premises.

15. Assignment. Excluding assignments that occur pursuant to Section 14 above, Tenant shall not assign or transfer this Lease, or any interest herein, without the prior written consent of Landlord, which shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Tenant is expressly permitted in its sole discretion to sublet a part or all of the Leased Premises or to assign its rights and responsibilities under this Lease, with notice to Landlord, but without obtaining Landlord's consent, to (a) any entity owned or controlled by Tenant or under common ownership or control with Tenant, or (b) any entity to which Tenant conveys all of its right title and interest in the Tenant's entity or in the Solar Facility.

16. Liens.

a. Landlord hereby waives any and all rights it may have to any lien rights, whether statutory or otherwise, on Tenant's personal property, including without limitation, the Solar Facility, Tenant's inventory, trade fixtures, and removable equipment and fixtures located within or on the Leased Premises, whether or not any part of the Solar Facility becomes so related to the Leased Premises that an interest therein would otherwise arise under applicable law. Landlord agrees to (i) take no action to impede or interfere with Leasehold Mortgagee's remedies under a security interest in said personal property of Tenant and (ii) execute, upon request, a confirmation of such waiver in a form reasonably satisfactory to Tenant and its Lenders.

b. Landlord expressly acknowledges and agrees that any contractual statutory or common law lien rights in favor of Landlord or any mortgage or deed of trust granted by Landlord subsequent to the date of this Lease are and shall be expressly made subordinate and inferior to Tenant's right, title and interest in this Lease, any sublease permitted hereunder and/or the Easements granted by this Lease and to any liens and security interests granted by Tenant in favor of any Leasehold Mortgagee. Landlord agrees to execute or cause its mortgagee to execute any further

documentation that may be requested by Tenant or a Leasehold Mortgagee of any of the foregoing to evidence such subordination.

c. In the event Landlord receives a breach or default notice or notice of lien from any of its Lenders or other party holding a mortgage, deed of trust or security interest in the Property, Landlord agrees to promptly (i) provide Tenant, the Leasehold Mortgagee and subtenant, if any, with a copy of such notice, and (ii) take such actions necessary to cure such breach and release any monetary encumbrances (i.e. mechanics' liens, judgment liens, tax liens, etc.).

d. If Landlord fails to pay any of its obligations secured by a mortgage, deed of trust or security interest, including, but not limited to, mechanics' liens, judgment liens, tax liens, in the Leased Premises when due, Tenant may at its sole option, pay such amount and deduct it from any amounts owed to the Landlord under this Lease.

17. <u>Breach and Default Provisions.</u>

a. Any one or more of the following events shall be an *"<u>Event of Default</u>"*:

i. if Tenant shall be in breach in the due and punctual payment of the Basic Rent or Additional Rent when and as the same shall become due and payable, and such breach shall continue for more than twenty (20) days after receipt by Tenant of written notice thereof; or

ii. if Tenant shall be in breach in keeping, observing or performing any of the non-monetary terms, covenants or conditions contained in this Lease on Tenant's part to be kept, performed or observed, and if such breach is not remedied by Tenant (a) within sixty (60) days after Tenant's receipt of written notice from Landlord specifying such breach, or (b) in the case of any such breach which cannot with due diligence and in good faith be cured within sixty (60) days, within such additional period as may be reasonably required to cure such breach with due diligence and in good faith (it being intended that, in connection with any such breach which is not susceptible of being cured with due diligence and in good faith within sixty (60) days, the time within which Tenant is required to cure such breach shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith).

iii. if Landlord shall be in breach in keeping, observing or performing any of the terms, covenants, representations, warranties or conditions contained in this Lease on Landlord's part to be kept, performed or observed, and if such breach is not remedied by Landlord (a) within thirty (30) days (forty-eight (48) hours in the event the breach is willful and materially interferes with the Permitted Use of or access to the Solar Facility or Leased Premises) after Landlord's receipt of written notice from Tenant specifying such breach, or (b) in the case

of any such breach which cannot with due diligence and in good faith be cured within thirty (30) days, within such additional period as may be reasonably required to cure such breach with due diligence and in good faith.

b. Following an Event of Default, the non-defaulting party may pursue any available remedies at law or in equity, subject to the provisions of this Lease and applicable law. Notwithstanding the foregoing, the non-defaulting party shall take commercially reasonable measures to mitigate damages resulting from such default. Tenant may, in its sole discretion, elect to cure a default on the part of Landlord, in which case Landlord shall reimburse Tenant for the reasonable and documented out-of-pocket expenses incurred by Tenant in pursuing to cure such default and, if Landlord fails to reimburse such expenses within thirty (30) days after receipt of an invoice therefor, Tenant shall be entitled to offset any unreimbursed expenses against Basic Rent or any other amounts due to Landlord under this Lease.

18. Surrender of Possession. Tenant shall, on or before the last day of the Final Term, or within one hundred twenty (120) days of any earlier termination of this Lease:

a. peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of subtenancies; and

b. at its sole cost and expense remove the Solar Facility from the Leased Premises provided, however, that Tenant shall have no obligation remove any access roads or pathways constructed or used by Tenant, all concrete mountings shall be removed to a depth of at least three (3) feet below surface grade, and any underground cabling or wiring at a depth of three (3) feet or greater may be abandoned in place if they are not a hazard and do not interfere with agricultural use or other consistent resource uses of the Property.

c. Tenant shall post a decommissioning surety with the Governmental Authority having jurisdiction over the Solar Facility, if required, as part of the regular permitting process.

19. Termination Rights.

A. Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Landlord, if:

a. At any time prior to the Primary Term, as to all or any part of the Leased Premises for any reason or no reason in Tenant's sole discretion;

b. Immediately if Landlord fails to cure as required under the Lease;

c. Any Governmental Authority or utility company denies a request or application by Tenant for any certificate, permit, license, or approval (collectively "*Approvals*") required for Tenant to construct or operate the Solar Facility on the Leased Premises or if any Approvals are cancelled, expire, lapse or are otherwise withdrawn or terminated;

d. Tenant, in its sole discretion, determines that any such Approvals may not be obtained in a timely manner;

e. Tenant determines that technical or other problems, preclude Tenant from using the Leased Premises for the Permitted Use;

f. Tenant determines that Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Premises suitable for the Permitted Use;

g. Utilities necessary, in Tenant's sole discretion, for Tenant's use of the Leased Premises are not available to the Leased Premises or suitable for the Permitted Use;

h. Tenant, in its sole discretion, determines that the Permitted Use is obsolete or not necessary.

In the event this Lease is terminated as to only a portion of the Leased Premises pursuant to this Section, Tenant shall remove that portion of the Solar Facility, if any, which is situated on that portion of the Leased Premises for which this Lease was terminated within one hundred twenty (120) days of said termination.

Upon a termination as to all of the Leased Premises, except for rights and obligations that expressly survive termination as set forth herein, all rights and privileges granted and obligations required under this Lease shall be deemed completely surrendered and each Party releases the other from any and all obligations hereunder, except as otherwise expressly set forth herein. Upon a termination as to a part of the Leased Premises neither Party shall have any further liability under this Lease as to the portion of the Leased Premises so terminated except as otherwise expressly set forth herein. If such termination is for a part of the Leased Premises, this Lease shall remain in effect as to the remainder of the Leased Premises.

20. Indemnification.

a. Indemnification of Landlord by Tenant: Tenant hereby agrees to indemnify and hold harmless Landlord, his heirs, assigns, employees and agents (collectively, "*Landlord Parties*") from and against any and all Claims (as defined in **Exhibit B**) that (i) arise from the possession, use, occupancy, management, repair, maintenance or control of the Leased Premises, Solar Facility, Easements or

any portion thereof, or any work or thing done in, on or about the Leased Premises, Solar Facility, Easements by any Tenant Parties (defined below); or (ii) arise from any negligent or willful act or omission of any Tenant Party (defined below) or invitees, or (iii) result from any default, breach, violation or nonperformance of this Lease by Tenant, except, in each case, to the extent caused by the negligence or willful misconduct of Landlord Parties. Tenant shall, at its own cost and expense, defend any and all actions, suits and proceedings which may be brought against Landlord with respect to the foregoing or in which Landlord may be impleaded. Tenant shall pay, satisfy and discharge any and all final judgments, orders and decrees which may be recovered against Landlord in connection with the foregoing.

b. Indemnification of Tenant by Landlord: Landlord hereby agrees to indemnify and hold harmless Tenant, its trustees, beneficiaries, partners, officers, directors, shareholders, employees and agents (collectively, "*Tenant Parties*") from and against any and all Claims that (i) arise from the ownership, possession, use, occupancy, management, repair, maintenance or control of the Property and Surrounding Property, or any portion thereof, or any work or thing done in, on or about the Leased Premises or Surrounding Property by Landlord Parties or Landlord's invitees, or (ii) arise from or are connected with any act or omission of Landlord Parties or invitees, or (iii) result from any default, breach, violation or nonperformance of this Lease or any provision therein by Landlord, except to the extent caused by the negligence or willful misconduct of Tenant Parties or invitees. Landlord shall, at its own cost and expense, defend any and all actions, suits and proceedings which may be brought against Tenant with respect to the foregoing or in which Tenant may be impleaded. Landlord shall pay, satisfy and discharge any and all final judgments, orders and decrees which may be recovered against Tenant in connection with the foregoing.

The Party seeking to be indemnified (the "*Indemnified Party*") shall have provided prompt written notice of a Claim or events likely to give rise to a Claim to the Party with the obligation to indemnify (the "*Indemnifying Party*") (in any event within sufficient time so as not to prejudice the defense of such Claim).

In the event of a Claim by a third party that is caused by the joint or concurrent negligence of the Parties, each Party shall share the costs of the Claim (defense, costs, judgment and settlement, etc.) in proportion to its negligence, which shall be determined by agreement of the Parties, or in the case of litigation, by the trier of fact.

The obligations of the Parties under this Section shall survive the expiration or earlier termination of this Lease.

21. Quiet Enjoyment; Non-Performance; Specific Performance; Nuisance.

a. Landlord agrees that Tenant shall quietly and peaceably have, hold, possess and enjoy the Leased Premises pursuant to the terms of this Lease and for the Term of this Lease, and any extension thereof, without hindrance, ejection or molestation by Landlord or any party claiming by, under or through Landlord. Landlord shall defend title to the Leased Premises, including access to the Leased Premises, and the use and occupancy of the same, against the claims of all persons, except those claiming by or through Tenant. Landlord shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, which may materially affect the Leased Premises, or the rights and/or obligations of Tenant hereunder, without first obtaining the prior written consent of Tenant.

b. Landlord recognizes that Tenant will incur significant expenses in reliance on this Lease and that monetary damages for any breach of this Lease may not be sufficient to compensate Tenant fully for such breach. Accordingly, without derogation of Tenant's other rights under this Lease, in the Event of Default by Landlord hereunder, Tenant shall be entitled to injunctive relief and specific performance hereof, without bond, from any court of competent jurisdiction and may withhold Basic Rent, Additional Rent and other charges payable to Landlord under this Lease until Landlord fulfills its obligations and may also undertake such obligation on Landlord's behalf and if Landlord does not pay Tenant the full amount of Tenant's costs and expenses within thirty (30) days of its receipt of an invoice setting forth the amount due, Tenant may offset the full amount due against all Basic Rent, Additional Rent and other charges payable hereunder to Landlord under this Lease until the full amount is fully reimbursed to Tenant.

c. Landlord has been informed by Tenant and understands that the presence and operations of the Solar Facility on the Leased Premises will potentially result in some nuisance to Landlord, such as higher noise levels than currently occur at the Leased Premises and the Surrounding Property and visual impact. Landlord hereby accepts such nuisance, waives any right that Landlord may have to object to such nuisance, Landlord releases Tenant from any Claims Landlord may have with respect to any such nuisance.

22. <u>Environmental</u>. Tenant shall conduct its business in compliance with all applicable Environmental Laws (as defined in **Exhibit B**). Tenant shall indemnify and hold harmless the Landlord from Claims to the extent resulting from Tenant's violation of any applicable Environmental Laws or to the extent that Tenant causes a release of any regulated substance to the environment, except to the extent resulting from the activities of Landlord, its agents, employees or contractors. Landlord shall indemnify and hold harmless Tenant from all Claims resulting from the violation of any applicable Environmental Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of Tenant. The Parties recognize that Tenant shall not be responsible for any environmental condition or issue on the Property existing or occurring prior to the Effective Date and shall

not be responsible for any environmental condition or issue, except to the extent resulting from Tenant's specific activities and responsibilities. In the event that Tenant encounters any Hazardous Substances (as defined in **Exhibit C**) that do not result from its activities, Tenant may reduce the size of the Leased Premises and Solar Facility (and the corresponding Basic Rent and Additional Rent) and/or may relocate its facilities to avoid such Hazardous Substances (as defined in **Exhibit C**) to a mutually agreeable location. If Tenant desires to remove all or some the Hazardous Substances (as defined in **Exhibit C**) or materials (such as soil) containing those Hazardous Substances (as defined in **Exhibit C**), Landlord agrees to be responsible for the cost of such removal and to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances. This provision shall survive the termination or earlier expiration of this Lease.

23. Consent. Except as otherwise expressly provided herein, where pursuant to the terms of this Lease or in connection with the administration of this Lease, the consent or approval of either Party will be required, requested, or appropriate, each Party covenants and agrees that its consent or approval will not be unreasonably or unduly withheld, delayed, or conditioned, and that the requesting party will not be charged for such consent or approval. To the extent this Lease provides for the requirement of Landlord's consent, if within ten (10) business days after Landlord's receipt of Tenant's written request for such consent, Landlord does not give notice of its reasons for not consenting to Tenant's request, Landlord shall conclusively be deemed to have given its consent. If within such ten (10) business day period, Landlord gives notice of its reasons for not consenting to Tenant's request, then Landlord and Tenant shall promptly meet to discuss Landlord's comments and concerns, and Landlord and Tenant shall use their respective best efforts to address such comments and concerns in a reasonable manner. In the event a resolution is not reached, Tenant and Landlord shall be entitled to pursue all their respective rights and remedies contained herein.

24. Limitation on Liability.

a. Landlord agrees that any claim, judgment or decree of any court or arbitrator(s) against Tenant and in favor of Landlord as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Lease on Tenant's part to be kept, observed and performed, shall be satisfied by Landlord's resorting to the interest of Tenant in this Lease, and not against any other assets of Tenant or the assets of Tenant's officers, directors, employees, shareholders, members, partners, other equity owners, and Landlord shall not have the right to seek or obtain a personal judgment against Tenant or Tenant's officers, directors, employees, shareholders, members, partners, other equity owners for any damages.

b. Tenant agrees that any claim, judgment or decree of any court or arbitrator(s) against Landlord and in favor of Tenant as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Lease on Landlord's part to be kept, observed and performed, shall be satisfied by Tenant's resorting to the interest of Landlord in the Property, and not against any other assets of Landlord.

25. **Landlord's Covenants Regarding Possession.** Landlord hereby covenants and agrees to give Tenant possession of the Leased Premises and Easements on the Effective Date, free and clear of all tenants and occupants. In addition, on or prior to the Effective Date, Landlord shall have delivered to Tenant the completed and executed copy of the Memorandum of Lease attached hereto as **Exhibit D** and any necessary Easements on Surrounding Property necessary to effectuate the rights and conditions set forth in the Lease including without limitation the matters set forth in Section 12. Landlord shall have removed all of its personal property and equipment from the Leased Premises, it being understood that Landlord shall have no right to enter onto the Leased Premises from and after the Effective Date hereof.

26. **Further Covenants and Representations of Landlord.** Landlord hereby represents, warrants, agrees and covenants to Tenant, that:

    a. Landlord owns fee simple title to the Leased Premises and Surrounding Property, if applicable, and has good, merchantable and insurable title, including access, to the Leased Premises and Surrounding Property, free and clear of all liens, encumbrances, claims, options, leases, rights of first refusals, or judgments. Landlord will not subject the Leased Premises or Surrounding Property to any additional liens, encumbrances, covenants, conditions, easements, rights-of-way, or similar matters after the Effective Date of this Lease without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned, or delayed. Landlord represents and warrants to Tenant that, other than matters of record which would be disclosed by a search of the public records, there are no other persons or entities having legal or beneficial title or ownership interests or possessor rights to the Leased Premises, whether the same purports to create an interest in ownership, use or access to, from, across or through the Leased Premises.

    b. There are no other leases, options to purchase, license agreements or other third-party rights to use or possess the Property, whether written or oral, recorded or unrecorded. Landlord shall not grant any option, leasehold, easement or any right of any kind, or cause or permit any activities or conditions, that would materially interfere with Tenant's rights hereunder or impair operation of the Solar Facility (including without limitation, by erecting or permitting to be erected any cell towers, water towers, billboards, silos, any other man-made structures to be placed, constructed, or to otherwise exist on any property owned or controlled by Landlord that may diminish the quantity of sunlight that otherwise would reach the Leased Premises or that may cause shade or shadows upon the Leased Premises or any portion thereof, and Landlord shall not emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Leased Premises, or burn or permit the burning of garbage, plant, shrub, and yard trimmings or other vegetation that could adversely affect insolation levels on the Leased Premises), excluding items in existence as of the Effective Date or normal tree growth on the Property outside the Leased Premises;

c. The person executing this Lease on behalf of Landlord has full power and authority to bind Landlord to the obligations of Landlord set forth herein, and upon execution and delivery of the same, this Lease will constitute valid and binding instruments enforceable in accordance with their terms. The entry into and performance of Landlord's obligations under this Lease will not violate or result in a breach of any contract, agreement or any law, administrative regulation, or court decree by which Landlord or the Leased Premises is bound, the consequence of which violation would be to prevent the performance of Landlord's obligations under this Lease. No consent of any other party is required for Landlord to enter into or perform its obligations hereunder.

d. Landlord has not (i) received notice of or been served with any pending or threatened litigation, condemnation, foreclosure or sale in lieu thereof with respect to any portion of the Leased Premises relating to or arising out of the ownership of the Leased Premises by any person, company or Governmental Authority, and (ii) filed or threatened within the last five (5) years, nor is currently considering, filing any litigation with respect to the Leased Premises or any portion thereof. Landlord shall promptly give Tenant a copy of any notice of any kind received by Landlord which could affect Tenant's rights hereunder or any Real Estate Taxes.

e. Landlord shall not cause any material violation of any laws, rules, regulations or ordinances applicable to the Property and has not received any notice of any pending or threatened taking by Governmental Authority, zoning change or legal, regulatory or other noncompliance relating to the Property.

f. The Leased Premises has lawful and valid access from the Leased Premises to existing public highways and roads, and sewer, electrical or other utility services, and all utilities which serve the Leased Premises enter the Leased Premises through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements, which easement(s) shall be sufficient for the purposes of Tenant.

g. Landlord has taken no action or failed to take actions that would cause a material increase in real property taxes or additional assessments on the Leased Premises prior to execution of this Lease.

h. Landlord has no knowledge (i) if any of the Leased Premises is within any area determined to be flood prone or within a flood zone under Federal designation; (ii) of the severance of any mineral rights and access rights related thereto; or (iii) of the existence of any archeological materials, graves, burial sites, buildings, foundations, wetlands or endangered or protected species.

i. The Leased Premises have not been and will not be used for the manufacturing, storage, discharge, release, or disposal of Hazardous Substances (as defined in

Exhibit C), (ii) neither the Leased Premises nor any part thereof is in violation of any Environmental Laws, (iii) there are no underground storage tanks located on or under the Leased Premises or the Surrounding Property, and (iv) the Leased Premises are free of any Hazardous Substances (as defined in **Exhibit C**) that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the Term of this Lease, and if same gives rise to or results in liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Landlord shall promptly take any and all remedial and removal action as required by law, at its sole expense, to clean up the Leased Premises and mitigate exposure to liability arising therefrom, and keep the Leased Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach. Landlord shall not discharge any Hazardous Substances (as defined in **Exhibit C**) on the Property and shall require its agents by contract not to discharge any Hazardous Substances (as defined in **Exhibit C**) on the Property, except in such amounts as may be needed in agricultural or forest management use in compliance with all Environmental Laws. This provision shall survive termination or expiration of the Lease.

j. Landlord has provided Tenant with all environmental studies, records and reports in its possession or control conducted by independent contractors, or Landlord, and all correspondence with any public or quasi-public authority having jurisdiction concerning environmental conditions of the Leased Premises, or which identify underground storage tanks or otherwise relate to contamination of the soil or groundwater of the Leased Premises or effluent into the air.

k. If Landlord is not a natural person, Landlord is a duly formed and validly existing entity and is qualified to do business in and in good standing under the laws of the State. There is no litigation or injunctive action or proceeding pending or, to the best of Landlord's knowledge, threatened against Landlord which would prevent the performance of Landlord's obligations under this Lease.

l. Landlord is not in the hands of a receiver, bankrupt or insolvent under any applicable federal or state standard, and Landlord has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary applicable of any applicable bankruptcy or creditor protection statute.

m. Landlord is not entering into the transactions described in this Lease with an intent to defraud any creditor or prefer the rights of one creditor over any other. Landlord and Tenant have negotiated this Lease at arms' length and the consideration paid represents fair value for the assets to be transferred.

27. Tenant's Representations. Tenant hereby represents, warrants, agrees and covenants to Tenant, that:

a. Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization and the undersigned representatives of Tenant have full power and authority to execute and deliver this Lease and enter into the Lease, without the consent or joinder of any party not joining in the execution hereof.

b. Tenant's execution of this Lease will not constitute a violation of nor conflict with nor constitute a default under any term or provision of any agreement or instrument to which Tenant is a party.

28. Tenant's Purchase Rights. If, at any time during the Term of the Lease, Landlord intends to offer to sell the Property or the Surrounding Property or any portion thereof or interest therein, including, without limitation, the Leased Premises (collectively or individually as the content may require, the "*Offer Property*") to a third party, other than to a child, to any other member of Landlord's family or to any entity controlling, controlled by, or under common control with Landlord (*an "Exempt Transferee"*), then Landlord shall, prior to any offering, deliver to Tenant written notice of the terms and conditions, upon which Landlord intends to offer the Offer Property for sale. Provided that no Event of Default has occurred and is continuing hereunder, Tenant shall have the right to purchase the Offer Property (or such part thereof or interest therein) on the terms set forth in the notice from Landlord by giving written notice of Tenant's intention to purchase to Landlord within thirty (30) business days after receiving notice from Landlord. In the event that Tenant fails to notify Landlord within said thirty (30) business day period of Tenant's election to exercise its right to purchase, or in the event Tenant notifies Landlord within said period that Tenant will not exercise its right to purchase, Landlord may proceed to sell the Offer Property (or such part thereof or interest therein) to any third party after the expiration of such thirty (30) business day period, but only on substantially the same terms and conditions as were set forth in the notice from Landlord to Tenant. Any material change in such terms and conditions, including any counteroffer by the third party, shall be deemed a new offer and Landlord shall not consummate any sale to a third party without first submitting the terms and conditions of the current offer to Tenant and Tenant shall have thirty (30) business days, after receipt of said notice in which to elect to exercise its right to purchase. Tenant's right to purchase as described herein shall survive a conveyance to a third party or to an Exempt Transferee.

29. Estoppel Certificates. Either Party agrees, at any time and from time to time upon not less than ten (10) days' prior notice by the other Party, to execute, acknowledge and deliver to the other Party, or to any person designated by the other Party, in a form substantially similar to the Estoppel Certificate attached hereto as **Exhibit F**, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the Basic Rent and any Additional Rent has been

paid, and stating whether or not the other Party is in default in keeping, observing or performing any term, covenant or condition contained in this Lease on the other Party's part to be kept, observed or performed and, if in default, specifying each such default, and any other factual matters pertaining to this Lease reasonably requested by the other Party, it being intended that any such statement delivered pursuant to this Section may be relied upon by the other Party or any prospective purchaser of the Leased Premises or any Mortgagee thereof or any purchaser of Landlord's interest in the Leased Premises.

30. **Tax Credits**. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Tenant's option, Landlord and Tenant shall amend this Lease or replace it with a different instrument so as to convert Tenant's interest in the Leased Premises to a substantially similar interest that makes Tenant eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Tenant to a fee interest in the Leased Premises, diminish Tenant's payment obligations under this Lease or extend the Term of this Lease.

31. **Confidentiality.** Landlord shall maintain in the strictest confidence (and not share with third parties including but not limited to other developers, investors or brokers) for the benefit of Tenant and any Leasehold Mortgagee, all information pertaining to the financial terms of or payments under this Lease, Tenant's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facility, and the like, whether disclosed by Tenant or any Leasehold Mortgagee, or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord or its employees or agents; or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity. Landlord shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Tenant or any Leasehold Mortgagee. Landlord shall receive Tenant's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Lease, the Solar Facility to be constructed on the Leased Premises by Tenant, or any other existing solar power project owned or operated by Tenant. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

32. **Effective Date.** This Lease shall be effective and binding upon the Parties as of the date first above written (the "*Effective Date*").

33. **Non-Merger of Estates.** The interests of Landlord and Tenant in the Leased Premises shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of any person who shall own the fee title to the Leasehold, or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest

in the Leased Premises, including any Leasehold Mortgagee, shall join in the execution of a written instrument effecting such merger of estates.

34. Attorneys' Fees. If any Party employs counsel to enforce or interpret this Lease, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal and/or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such reasonable attorneys' fees and costs.

35. Brokers. Each Party represents and warrants to the other Party that neither it nor its officers or agents, nor anyone acting on its behalf, has dealt with any broker in the negotiating or making of this Lease, and the Parties agree to indemnify and hold each other, their agents, employees, partners, directors, shareholders and independent contractors harmless from all liabilities, costs, demands, judgments, settlements, claims and losses, including reasonable attorneys' fees and costs, incurred by either Party in conjunction with any such claim or claims of any other broker or brokers.

36. Headings. The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

37. Time of Essence. Time is of the essence for Landlord's and Tenant's obligations under this Lease.

38. Severability. If any section, subsection, term, or provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Lease, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Lease shall be valid or enforceable to the fullest extent permitted by law.

39. Further Assurances. Each of the Parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Lease or any other agreement contained herein in the manner contemplated hereby.

40. Amendments. This Lease may not be amended or varied except in a writing signed by both Parties.

41. Publicity and Naming Rights. Tenant exclusively owns the rights of naming the Solar Facility, including the right to initiate publicity about the Solar Facility, and owns the right to transfer the publicity and naming rights to another party. Publicity may include, but not be limited to, press releases, ground-breaking and ribbon-cutting ceremonies, radio, television, and internet news media articles and interviews, and facilitation of any editorial work. Any planned publicity shall be communicated in advance to Landlord, who will be given reasonable opportunity to offer input to planned publicity. Notwithstanding the foregoing, Landlord has the right to decline to participate in any publicity.

42. Miscellaneous Provisions.

a. All notices, requests, demands or other communications which may be or are required or permitted to be served or given under this Lease shall be in writing and shall be sent by personal delivery, by commercial air or land delivery service, or by registered or certified mail, return receipt requested, first-class postage prepaid, (i) if to Landlord, at 106 Western Avenue, Hampden, ME 04444, and (ii) if to Tenant at P.O. Box 171381, Boston, MA, 02117, or at any other address that may be given by one Party to the other by notice pursuant to this Section. Such notices shall be deemed to have been given at the time of receipt. Rejection or refusal to accept delivery of any notice shall be deemed to be in receipt of any such notice as of the date of rejection or refusal.

b. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural and words in the plural shall be held to include the singular, when the context so requires. In the event that more than one person or entity constitutes Landlord hereunder, the rights, duties, obligations and liabilities of the entities comprising Landlord shall be joint and several. In any instance where the Landlord's consent is needed for any action or matter arising under or related to this Lease, Tenant shall be entitled to rely on the authority of either one or both of the entities comprising Landlord.

c. The captions herein are inserted only for convenience, and they are in no way to be construed as a part of this Lease or as a limitation on the scope of the particular provisions to which they refer.

d. The waiver by any Party of any instance of a breach of any covenant or agreement herein shall not be deemed to constitute a waiver of any subsequent breach of the same or any other covenant or agreement under this Lease.

e. This Lease is made pursuant to, and shall be construed and enforced in accordance with, the laws of the State of Maine.

f. The parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals

contained in this Lease shall be construed as covenants running with the Leased Premises and as extending to, inuring to the benefit of, and being binding upon, Landlord and Tenant, and their respective successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Lease, all to the end that this Lease shall always bind the owner and holder of any fee or leasehold interest in or to the Leased Premises.

g. This Lease cannot be changed or terminated orally. This Lease, including the attached Exhibits, contains the entire agreement between the parties and is intended by the parties to set forth their entire agreement in respect of the Leased Premises with respect to the subject matter hereof, and any agreement hereafter made shall be ineffective to change, modify or discharge this Lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

h. Upon the expiration or earlier termination of this Lease in accordance with its terms, this Lease shall cease to have force and effect, unless otherwise expressly set forth or the context requires otherwise to achieve the Parties' intent with respect thereto.

i. This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing with the same force and effect as if it were an original.

j. This Lease shall supersede and replace all prior agreements and understandings, oral or written, between Landlord and Tenant regarding the matters contained herein.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the date first above written.

Landlord:

LANDLORD: Town of Hampden

_____
Printed Name: Paula A. Scott
Title: Town Manager, Duly Authorized
Date: _____

TENANT: BWC Jimmie Pond, LLC
a Delaware limited liability company

By: _____
Its: _____
Date: _____

Exhibit A: Legal Description of the Leased Premises
Exhibit A-1: Legal Description of the Right of Way Easement
Exhibit A-2: Survey of the Leased Premises and the Right of Way Easement
Exhibit B: Definitions
Exhibit C: Definition of Hazardous Substance
Exhibit D: Memorandum of Lease
Exhibit E: Subordination, Non-disturbance and Attornment Agreement
Exhibit F: Acknowledgement and Estoppel Agreement

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

[See attached]

EXHIBIT A-1

LEGAL DESCRIPTION OF THE RIGHT OF WAY EASEMENT

[See attached]

EXHIBIT A-2

SURVEY OF THE LEASED PREMISES AND RIGHT OF WAY EASEMENT

[See attached]

EXHIBIT B

DEFINITIONS

For purposes of this Lease, the following terms shall have the following meanings:

"Additional Rent" shall mean all payment obligations of Tenant to Landlord hereunder, in addition to the obligation to pay Basic Rent.

"Alterations" shall have the meaning set forth in Section 7(a).

"Basic Rent" shall include the Monthly Phase Rent and the Quarterly Phase Rent payable for the Term in accordance with Section 3.

"Claims" shall mean all labilities, debts, liens, causes of action, administrative orders, personal injuries, losses, damages, demands and costs (including, without limitation, response and/or remedial costs, interest, fines, penalties, and expenses, including reasonable attorneys' fees, consultants' fees, court costs and all other out of pocket expenses).

"Commercial Operation" shall mean that (a) completion of the construction and successful testing of the Solar Facility has occurred, (b) the Solar Facility has obtained final approval for interconnected operation by the local electric utility, (c) the Solar Facility has been interconnected to the utility electric grid, and (d) sale of energy on a commercial basis has commenced.

"Commercial Operation Date" or "COD" shall mean the first day of the calendar month immediately following that date on which Tenant notifies Landlord in writing of Commercial Operation (as defined above).

"Construction Phase" shall commence upon commencement of construction or installation of the Solar Facility.

"Construction Start Date" shall mean the first day of the calendar month immediately following that date on which Tenant notifies Landlord in writing of commencement of the Construction Phase.

"Environmental Laws" shall mean all applicable federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Substances (as defined in Exhibit C).

"Exempt Transferee" shall have the meaning set forth in Section 28.

"Final Term" shall have the meaning set forth in Section 2.

"Governmental Authorities" shall mean any board, bureau, commission, department or body of any municipal, county, state or federal governmental unit or subdivision thereof, having or acquiring jurisdiction over the Leased Premises or the Permitted Use, including any Board of Fire Underwriters having jurisdiction over the Leased Premises.

"Hazardous Substances" shall have the meaning as set forth in **Exhibit "C"** hereof.

"Impositions" shall mean any and all increases in Real Estate Taxes, personal property taxes, water and sewer charges, rates and rents, excises, levies, license and permit fees, utility charges and other charges, of any kind and nature whatsoever associated with the Solar Facility, which shall or may during the Term be assessed against the Leased Premises, levied, charged, confirmed or imposed upon or become payable out of or become a lien on the Leased Premises.

"Initial Term" shall have the meaning set forth Section 2.

"Installed Power" shall mean the AC nameplate capacity of the Solar Facility.

"Leasehold Mortgage" shall mean any instrument including, but not limited to, a Mortgage, mortgage, agreement for sale, lease in a sale/leaseback or "synthetic lease" transaction, or other security device which is delivered by Tenant to a Leasehold Mortgagee and which creates an encumbrance on Tenant's or any sublessee's interest in the Leased Premises or Solar Facility.

"Leasehold Mortgagee" shall mean the beneficiary or holder of a Leasehold Mortgage.

"Legal Requirements" shall mean all applicable laws, statutes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities, and the appropriate agencies, offices, departments, boards and commissions thereof, whether now or hereafter in force, applicable to the Leased Premises, or any part thereof, as to the manner of use or occupancy or the maintenance, repair or condition of the Leased Premises, or any part thereof.

"Lender" shall mean a bank, savings bank, trust company, insurance company, pension or profit-sharing trust, retirement or welfare fund, real estate investment trust or any other party providing financing to the Tenant.

"Memorandum of Lease" shall mean the memorandum attached hereto as **Exhibit "D"**, which Memorandum of Lease shall be executed by Landlord and Tenant on or as of the Effective Date and shall be recorded in the appropriate Registry by Tenant, at Tenant's expense.

"Primary Term" shall have the meaning set forth in Section 2.

"Private Roads" shall mean any roads, including, without limiting, two-tracks, driveways and appurtenant easements, either appurtenant to the Leased Premises or appurtenant to other property owned or controlled by Landlord or any Landlord affiliate, which property is adjacent to the Leased Premises.

"Real Estate Taxes" shall mean real property taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, levied or assessed upon or with respect to the ownership of the Leased Premises imposed by any public or quasi-public authority having jurisdiction. Real Estate Taxes shall not include any municipal, state or federal income, income profits or revenue tax imposed on rent, inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy.

"Solar Facility" shall have the meaning set forth in the second paragraph of this Lease.

"State" shall mean the State of Maine.

"Surrounding Property" shall mean the Property on which the Leased Premises is located and adjacent to real property owned or controlled by Landlord or any affiliates.

"Term" shall mean collectively, the Initial Term, Primary Term, Renewal Terms, if any, and Final Term.

EXHIBIT C

DEFINITION OF HAZARDOUS SUBSTANCE

The term "Hazardous Substance" as used in this Lease shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Substances shall also mean any and all other similar terms defined in other federal state and local law, statues, regulations, orders or rule and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) mold and fungal material, (viii) per- and polyfluoroalkyl substances (PFAS), and (ix) radioactive materials and waste.

In addition, a Hazardous Substance shall include:

(1) A "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability act of 1980, 42 U.S.C. §§ 6901, et seq.;

(2) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substances or by-product;

(3) A material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(4) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq.;

(5) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.;

(6) Any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011, et seq., or the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101, et seq.;

(7) Industrial process and pollution control wastes, whether or not "hazardous" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

(8) Any substances regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq.;

(9) Mold and organic material of a mold-inducing nature;

(10) Radon; and

(11) Any substance regulated under the Clean Air Act, 42 U.S.C. §§ 7401, et seq.

EXHIBIT D

[see attached]

MEMORANDUM OF LEASE

DOCUMENT PREPARED BY AND
AFTER RECORDING, PLEASE RETURN TO:

_____
_____
_____
_____

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE is made and entered into as of _____, 20__, by and by and between **Town of Hampden, Maine** with an address of 106 Western Avenue, Hampden, ME 04444 ("Landlord" and "Grantor" for indexing purposes), and BWC Jimmie Pond, LLC, a Delaware limited liability company which has an address of P.O. Box 171381, Boston, MA 02117 ("Tenant" and "Grantee" for indexing purposes).

WITNESSETH

WHEREAS, Landlord owns certain property located at Route 202, Hampden, ME 04444 more clearly described in the Deed recorded in the Penobscot County Registry of Deeds at Book 9616, Page 287 ("Property").

WHEREAS, pursuant to that certain Ground Lease Agreement (the "Lease") dated _____, 20___ by and between Landlord and Tenant, Tenant leases from Landlord a portion of the Property more particularly described in Exhibit A attached hereto and made a part hereof, together with all appurtenances thereto (collectively, the "Leased Premises").

WHEREAS, the parties hereto desire to enter into this Memorandum of Lease for the purpose of recording a document in the Penobscot County Registry of Deeds (the "Land Records") that will provide public notice of the existence of the Lease and certain of its terms and conditions.

NOW, THEREFORE, the parties hereto do hereby certify and agree as follows:

1. Lease of Leased Premises. Landlord leases to Tenant, and Tenant leases from Landlord, for the Term (as defined below) and subject to the provisions of the Lease, to each of which Landlord and Tenant mutually agree, the Leased Premises.

2. Term. The term of the Lease (the "Term") commenced on the date of the Lease, and shall continue for a period of twenty (20) years following the Commercial Operation Date (as defined in the Lease). The Lease contains Tenant's option to extend the Lease by four (4) periods of five (5) years each.

3. Successors and Assigns. The Lease provides that the provisions of the Lease are binding upon and inure to the benefit of Landlord and Tenant and each of their respective representatives, successors and assigns, subject to certain limitations.

4. Right of First Offer. Tenant has a right of first offer to purchase the Leased Premises or any other portion of the Property, the terms of which are contained within the Lease.

5. Easements. Under the Lease, Landlord grants to Tenant easements for ingress, egress, utility and solar access, all as more particularly described in the Lease and shown on Exhibit B, including but not limited to exclusive easement pursuant to 33 M.R.S.A. §1401, et seq., on, over and across the Property for the purpose of ensuring access to direct sunlight to any solar panels on the Leased Premises and an exclusive easement prohibiting any obstruction of direct sunlight throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360º) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180º) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property. Such easement shall be appurtenant to the Leased Premises and shall run with and against the Property, shall be a charge and burden on the Property and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, lessees, employees and agents. The parties agree that this provision satisfies the recording requirements in 33 M.R.S.A. §1401, et seq.

6. Tenant's Personal Property. The Solar Facility (as defined in the Lease) installed and operated by Tenant at the Leased Premises shall not be deemed a fixture. The Solar Facility is Tenant's personal property and Landlord has no right, title or interest in the Solar Facility. Further, Landlord has waived all right of levy for rent, all claims and demands against the Solar Facility and all rights it may have to place a lien on the Solar Facility.

7. Purpose of Memorandum of Lease. This Memorandum of Lease, when recorded with the Penobscot County Registry of Deeds is intended to serve as public notice of the existence of the Lease and of certain of its terms and conditions, including easements and restrictions affecting the Leased Premises and the property adjacent to the Leased Premises. This Memorandum of Lease does not describe or refer to all of the terms or conditions contained in the Lease, nor is this Memorandum of Lease intended to modify, amend or vary any of the terms or conditions set forth in the Lease.

(*signature pages follow*)

IN WITNESS WHEREOF, the parties have caused this Memorandum of Lease to be duly executed under seal and delivered as of the date first written above.

Landlord: **TOWN OF HAMPDEN**

By: _____
Name: Paula A. Scott
Title: Town Manager, Duly Authorized
Date: _____

STATE OF MAINE
COUNTY OF _____

On this _____ day of _____, 202___, before me, the undersigned notary public, personally appeared Paula A. Scott, Town Manager, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of _____.

_____
Printed Name:_____
My Commission Expires: _____

Tenant: **BWC JIMMIE POND, LLC**, a Delaware limited liability company

By: _____
Its: _____
Date: _____

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

On this _____ day of _____, 202_, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of BWC Jimmie Pond, LLC.

_____
Printed Name:_____
My Commission Expires: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF LEASED PREMISES

EXHIBIT B TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF RIGHT OF WAY EASEMENT

EXHIBIT E

SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT

AGREEMENT, dated as of this _____ day of _____, 202__, between Town of Hampden which has an address of 106 Western Avenue, Hampden, ME 04444 (“Mortgagor”); <Lender>, a national banking association, with its principal office located at _____ ("Mortgagee"); and BWC Jimmie Pond, LLC , a Delaware limited liability company, with a principal office located at P.O. Box 171381, Boston, MA, 02117 ("Tenant").

PREAMBLE

Premises Address: Route 202, Hampden, ME 04444

WHEREAS, Mortgagee is the holder of a certain mortgage dated _____ (the "Mortgage") and recorded or to be recorded with the Penobscot County Registry of Deeds, encumbering a certain parcel of land situated on Route 202, Hampden, ME 04444, more particularly described in a deed recorded with the Penobscot County Registry of Deeds at Deed Book 9616, Page 287.

WHEREAS, Tenant has entered into a certain Ground Lease Agreement (the "Lease"), dated as of _____ 2021, between Landlord and Tenant, as tenant, covering the space defined therein as the "Leased Property" as more particularly described in Exhibit A attached hereto.

WHEREAS, Tenant acknowledges the subordination of its Lease to the Mortgage and to any renewals, modifications, replacements, consolidations and extensions thereof, but wishes an assurance that, so long as Tenant complies with the terms of the Lease, Mortgagee will permit Tenant to have quiet enjoyment of the Leased Property;

NOW, THEREFORE, in consideration of the mutual promises herein contained, it is agreed by and between the parties hereto as follows:

(1) The Lease is and shall be subject and subordinate to the lien of the Mortgage as it affects the Leased Property covered by the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof.

(2) The Mortgagee hereby assents to the Lease (subject to Section 4 below) and agrees with the Tenant that, in the event of a breach or default under the Mortgage by Mortgagor, to provide Tenant with notice of same and to provide Tenant and its lenders, at their option, a reasonable period of time following such notice to cure such breaches or default on behalf of Mortgagor. In the event of an entry by the Mortgagee to foreclose the Mortgage, or in the event of a foreclosure of the Mortgage, by entry or by sale, the Tenant, if it is not then in default with respect to any of the covenants or conditions of the Lease by the Tenant to be performed or observed and no event has occurred and no condition exists, which after the passage of time (after notice required by the Lease, if any) would entitle Mortgagor, as landlord to terminate

the Lease under its terms, or would cause, without any further action by such landlord, the termination of the Lease, or would entitle such landlord to dispossess Tenant from the Leased Property, shall peaceably hold and enjoy the Leased Property for the remainder of the unexpired term of the Lease, including any extension thereof which Tenant pursuant thereto may exercise, upon the same terms, covenants and conditions as in the Lease, including its options to extend as therein set forth, and without any hindrance or interruption from the Mortgagee, for any reason other than one which would entitle landlord to terminate the Lease under its terms, or would cause, without any further action by such landlord, the termination of the Lease, or would entitle such landlord to dispossess Tenant from the Leased Property. Mortgagee further agrees to comply with such other requirements as may be reasonably required by Tenant or its lenders to ensure the interests of Tenant or its lenders are not interfered with.

(3) In consideration of the foregoing covenants by the Mortgagee, the Tenant does hereby covenant with the Mortgagee that in the event of a foreclosure of the Mortgage, or in the event Mortgagee comes into possession or acquires title to the Leased Property as a result of the enforcement of foreclosure of the Mortgage or by a conveyance to Mortgagee in lieu of foreclosure, provided Mortgagee abides by the terms, covenants and conditions of the Lease as provided therein, the Tenant will recognize and attorn to the Mortgagee as its landlord for the remainder of the unexpired term of the Lease including its options to extend as therein set forth, upon the covenants and conditions thereof by the Tenant to be performed and observed, the Tenant hereby agreeing to perform and observe the same, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, immediately upon Mortgagee succeeding to the interest of landlord in the Leased Property. Tenant agrees, however, upon the election of and written demand by Mortgagee, within sixty (60) days after the Mortgagee receives title to the Leased Property, to execute an instrument in confirmation of the foregoing provisions, reasonably satisfactory to Mortgagee and Tenant, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

(4) In the event of an entry by the Mortgagee to foreclose the Mortgage, or in the event of a foreclosure of the mortgage by entry or by sale, or if the Mortgagee shall in any manner and for any reason succeed to the interest of the landlord under the Lease:

(i) Mortgagee shall not be liable for any act or omission of any prior landlord (including the landlord), unless the same accrue or are continuing on or after the date Mortgagee takes possession of or title to the Leased Property or Mortgagee receives written notice of same from Tenant;

(ii) Mortgagee shall not be bound by any material amendments or modifications of the Lease made without its written consent (which shall not be unreasonably withheld); provided, however, that amendments that change the location of the Leased Property on the Property and/or extend the term of the Lease do not require the consent of Mortgagee.

(5) As used herein, wherever the context so requires or admits, the word "Mortgagee" includes any person claiming through or under the Mortgagee or the Mortgage, including but not limited to any purchaser at foreclosure sale, and the word "Tenant" shall include its successors and assigns.

(6) All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

Mortgagor: Town of Hampden
106 Western Avenue
Hampden, ME 04444

Mortgagee: <Lender name and address>

Tenant: BWC Jimmie Pond, LLC
P.O. Box 171381
Boston, MA, 02117

Remainder of Page Intentionally Left Blank

Signatures on Following Page

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as a sealed instrument by its officers hereunto duly authorized on the date first above written.

Mortgagor: Town of Hampden

_____

Name: Paula A. Scott

Title: Town Manager, Duly Authorized

Date: _____

STATE OF MAINE)

) ACKNOWLEDGMENT

COUNTY OF _____)

On this _____ day of _____, 202__, before me, the undersigned notary public, personally appeared Paula A. Scott, Town Manager, personally known to me or proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

WITNESS my hand and official Notarial Seal.

_____

Notary Public

My Commission Expires: _____

Mortgagee: **<Lender>**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF_____)

) ACKNOWLEDGMENT

COUNTY OF _____)

On this _____ day of _____, 202__, before me, the undersigned notary public, personally appeared _____, _____ of _____, personally known to me or proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose on behalf of _____.

WITNESS my hand and official Notarial Seal.

_____

Notary Public

My Commission Expires: _____

Tenant: BWC Jimmie Pond, LLC

By: _____

Its: _____

Date: _____

STATE OF MASSACHUSETTS)

) ACKNOWLEDGMENT

COUNTY OF SUFFOLK)

On this _____ day of _____, 2021, before me, the undersigned notary public, personally appeared _____, _____ of _____personally known to me or proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose on behalf of BWC Jimmie Pond, LLC.

WITNESS my hand and official Notarial Seal.

_____

Notary Public

My Commission Expires: _____

EXHIBIT A TO SNDA

Legal Description of Leased Property

EXHIBIT B TO SNDA

Legal Description of Right of Way Easement

EXHIBIT F

ACKNOWLEDGEMENT AND ESTOPPEL AGREEMENT

This Acknowledgement and Estoppel Agreement (this "Agreement") is made and entered into as of _____, 2021 (the "Effective Date"), by and among BWC Jimmie Pond, LLC, a Delaware limited liability company (the "Project Company") and Town of Hampden ("Landlord")and ***INSERT ASSET OWNER INFORMATION*** (collectively, the "Parties" and each individually, a "Party").

RECITALS

A. WHEREAS, Landlord entered into that certain Ground Lease Agreement with Project Company, dated as of _____, 2021 (the "Lease"), pursuant to which Landlord leased approximately _____ acres located at Route 202, Hampden, ME 04444 (the "Property") to Project Company for the construction of a solar generation facility (the "Facility").

B. WHEREAS, BlueWave Project Development, LLC ("Bluewave"), an affiliate of Project Company, owns all of the issued and outstanding ownership and other equity interests in Project Company (collectively, the "Membership Interests"), and proposes to sell all of the Membership Interests to ***INSERT ASSET OWNER*** or its affiliate (collectively, "***ASSET OWNER***").

C. WHEREAS, in connection with the foregoing sale of the Membership Interests, the Parties have agreed to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The copy of the Lease, attached hereto as Exhibit A, constitutes a true and complete copy of the Lease.

2. The Lease is in full force and effect, and has not been modified or amended in any way except as shown on the document attached hereto as Exhibit A.

3. The Lease and this Agreement constitute the entire agreement between Landlord and Project Company with respect to the lease of the Property for the Facility. Other than the Lease and this Agreement, there are no agreements between Landlord and Project Company relating to the lease of the Property for the Facility.

4. Landlord has not transferred or assigned any interest in the Lease or in or to the Property and has not consented to any previous transfer or assignment by Project Company of its

rights under the Lease or to the Property. No third party has an option or preferential right to purchase or utilize all or any part of the Property or the Lease.

5. Neither Landlord nor Project Company is in default under or has breached the Lease, and to the best of Landlord's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default or breach by any of the parties under the Lease. There are no disputes or proceedings between Landlord on the one hand and Project Company on the other with respect to the Lease.

6. Landlord affirms that all representations made by it in the Lease are true and correct, and that all warranties under the Lease are in full force and effect.

7. Project Company has timely submitted all payments required of it under the Lease.

8. Landlord is not aware of any event, act, circumstance or condition that would give rise to a right of Landlord to terminate the Lease.

9. Project Company does not owe any indemnity payments to Landlord, and Landlord has no existing counterclaims, offsets or defenses against either Bluewave or Project Company, under the Lease.

10. There are no proceedings pending or, to Landlord's knowledge without inquiry, threatened against or affecting Landlord in any court or by or before any court, governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Landlord to perform its obligations under the Lease.

11. Landlord hereby acknowledges and consents, to the extent necessary, to: (a) the purchase by ***ASSET OWNER*** of the Membership Interests in Project Company; (b) the collateral assignment, leasehold mortgage, and/or granting of a security interest by ***ASSET OWNER*** or Project Company in the Lease to a financing party (a "Financing Party") in connection with the financing (including, but not limited to, pursuant to a sale-leaseback transaction) (a "Financing") of the Facility; (c) any such Financing of the Facility (including the sale and leaseback of the Facility); and (d) the pledge of the direct and indirect ownership interests in Project Company in favor of a Financing Party.

12. In connection with any Financing of the Facility, Landlord acknowledges that upon receipt of notice from Project Company: (a) the Financing Party identified in such notice shall be entitled to all rights and interests due to such status under the Lease, including but not limited to under Paragraph 14 thereof; and (b) Landlord shall execute such agreements as are reasonably requested by the Financing Party, including an estoppel and agreement substantially similar to this Agreement.

13. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Lease.

14. This Agreement may be executed in one or more counterparts, all which taken together shall constitute one and the same instrument.

15. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall insure to the benefit of each of the Parties, any Financing Party, and each of their respective successors and assigns.

16. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Maine without reference to any choice of law principles.

IN WITNESS WHEREOF, each of the Parties, by its duly authorized officer, intending to be legally bound, has caused the execution and delivery of this Agreement as of the Effective Date first written above.

LANDLORD: **Town of Hampden**

By: _____

Name: Paula A. Scott

Title: Town Manager, Duly Authorized

PROJECT COMPANY: **BWC Jimmie Pond, LLC**

By: _____

Name:_____

Title:_____

***ASSET OWNER*:** **ASSET OWNER COMPANY NAME**

By: _____

Name:_____

Title:_____